FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS AND ORDERS OF THE FEDERAL TRADE COMMISSION

FEBRUARY 14 TO NOVEMBER 4, 1923

PUBLISHED BY THE COMMISSION

VOLUME VI

WASHINGTON
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MEMBERS OF THE FEDERAL TRADE COMMISSION.

AS OF NOVEMBER 4, 1923.

HUSTON THOMPSON, *Chairman.*
  Took oath of office January 17, 1919, and September 26, 1919.[1]
VERNON W. VAN FLEET, *Vice Chairman.*
  Took oath of office June 30, 1922.
NELSON B. GASKILL.
  Took oath of office January 31, 1920.
JOHN F. NUGENT.
  Took oath of office January 15, 1921.
VICTOR MURDOCK.
  Took oath of office September 4, 1917, and October 4, 1918.[1]
    OTIS B. JOHNSON, *Secretary.*
      Took oath of office August 7, 1922.

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[1] Second term.

PREFACE.

The present volume of decisions, being the sixth issued by the Commission, covers the period from February 14, 1923, to November 4, 1923, inclusive.

The number and range of these decisions is now considerable, and their importance as a code of business law is correspondingly enhanced. Large numbers of business concerns and lawyers have found it profitable to possess a set of these rulings, as a safe guide and aid in their work. To those who do not possess a set, or do not receive the advance sheets, the Commission is glad to send information regarding its decisions, upon written request. It is also hoped to bring out in a short while a new edition of the Index-Digest, and a new edition of the Acts from which the Commission Derives Its Powers, with Annotations, together with all the decisions of the courts in the cases instituted by or against the Commission, recompiled and republished in one volume.

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

CONTENTS.

TABLE OF CASES.

[The names in all CAPITALS refer to cases in which orders to cease and desist have been entered by the Commission, and which are reported in full in this volume. The names in *italics* refer to cases in which the Commission has entered orders of discontinuance or dismissal only.]

TABLE OF CASES IN WHICH PETITIONS FOR REVIEW OF, OR APPLICATIONS TO ENFORCE, ORDERS OF THE COMMISSION HAVE BEEN FILED IN THE CIRCUIT COURTS OF APPEALS FROM FEBRUARY 13, 1923, TO NOVEMBER 4, 1923.

Name.	Volume.	Page.
CHICAGO PORTRAIT COMPANY	V	396
Petition filed in the United States Circuit Court of Appeals for the Seventh Circuit on March 22, 1923. Commission's order set aside December 23, 1924. Opinion and decision not reported as of this writing. Petition for rehearing filed January 21, 1925.		
S. E. J. COX ET AL	V	38
Application to enforce order filed in the United States Circuit Court of Appeals for the Fifth Circuit on May 8, 1923.		
WESTERN MEAT COMPANY	V	417
Petition filed in the United States Circuit Court of Appeals for the Ninth Circuit on July 27, 1923. Petition denied September 3, 1924. 1 F. (2d) 95. Second paragragh of commission's order modified on petition for rehearing, February 17, 1925. Opinion and decision not reported as of this writing.		
FOX FILM CORPORATION	VI	191
Petition filed in the United States Circuit Court of Appeals for the Second Circuit on August 16, 1923. Commission's order affirmed January 7, 1924. 296 Fed. 353.		
JOHN BENE & SONS, INC	V	314
Petition filed in the United States Circuit Court of Appeals for the Second Circuit on September 24, 1923. Commission's order reversed May 8, 1924. 299 Fed. 468. Petition for rehearing filed May 23, 1924. Denied May 26, 1924.		
BUTTERICK COMPANY ET AL	VI	310
Petition filed in the United States Circuit Court of Appeals for the Second Circuit on October 2, 1923. Petition denied, and commission's cross petition for enforcement of its order granted, January 5, 1925. Opinion and decision not reported as of this writing. Petition for writ of certiorari filed in the Supreme Court by the petitioners on February 14, 1925.		
UNITED TYPOTHETAE OF AMERICA ET AL	VI	345
Petition filed in the United States Circuit Court of Appeals for the Seventh Circuit on October 12, 1923. Petition dismissed July 30, 1924 (by stipulation between the parties).		

FEDERAL TRADE COMMISSION DECISIONS.

FINDINGS AND ORDERS FEBRUARY 14 TO NOVEMBER 4, 1923.

FEDERAL TRADE COMMISSION
v.
JOHN McQUADE & COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 929—February 14, 1923.

SYLLABUS.

Where the products of an internationally known and long established foreign manufacturer of high grade white zincs containing no adulterants whatsoever had become known to the trade and public under the brand "Vieille Montagne," and where the words "Green Seal" and "White Lead" had come to be understood by the trade and the purchasing public as denoting respectively a high grade white zinc and pigments composed wholly of commercially pure basic lead carbonate or basic lead sulphate; and thereafter an American manufacturer of paints, zincs, white lead, and other similar goods,

(*a*) Offered and sold one of its products, containing not more than 20% of zinc, in containers labeled "FRENCH WHITE ZINC GREEN SEAL No. 1 ZINC FROM THE VIEILLE MONTAGNE CO. PARIS"; and

(*b*) Used and featured the words "Green Seal" and "White Lead," on containers of similar products containing not more than 20% zinc oxide, and little or no basic lead carbonate or basic lead sulphate respectively;

With the result that the trade and purchasing public were misled respecting the source and composition of the aforesaid products:

Held, That such simulation of the trade name of a competitor's product, and such mislabeling, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest 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 charges that John McQuade & Company, Inc., hereinafter referred to as the respondent, has been and is now using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, John McQuade & Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York. That its principal office and place of business is located in the borough of Brooklyn in the city and State of New York.

That, at all the times hereinafter mentioned, the respondent was, ever since has been and now is engaged in the business of manufacturing and selling in interstate commerce to wholesalers and dealers located in other States of the United States and the District of Columbia, paints, oil colors, enamels, oil finishes, zinc, varnishes, white lead, lead compositions and other similar goods, wares and merchandise.

That, at all the times hereinafter mentioned, there was, ever since has been and now is a constant current of trade and commerce in said and similar products between and among the various States and Territories of the United States and the District of Columbia and particularly from the said city of New York, State of New York, to and into and among the various other States and Territories of the United States and the District of Columbia; that in the course of its said business the said respondent, at all the times hereinafter mentioned, was, ever since has been and now is, in competition with other corporations, partnerships and individuals engaged in the manufacture and sale of said and similar products in and among the various States and Territories of the United States and the District of Columbia.

PAR. 2. That for more than one year immediately preceding the issuance of this complaint the respondent has manufactured, and sold in thé manner and places set out in paragraph 1 of this complaint, a product upon the commercial containers of which the respondent places labels of one of which the following is substantially a correct copy:

"FRENCH WHITE ZINC
GREEN SEAL
No. 1
ZINC
FROM THE
VIELLE MONTAGNE CO.
PARIS"

That the name "Vieille Montagne" is a name commonly applied by the trade to the white zinc products manufactured and sold to the trade by the Societe des Mines & Fonderies de Zinc de la Vieille Montagne, which, at all the times mentioned herein, was, ever since has been and now is located and engaged in business at Angleur par Chenee Belgium, an internationally known and long established manufacturer of high grade white zinc containing no adulterants whatsoever; that the product manufactured by the respondent and sold by it under the labels mentioned above, and particularly under the one above set forth, as and for the product of the said Societe

1 Complaint.

des Mines & Fonderies de Zinc de la Vieille Montagne, contains no more than approximately 20 per cent of zinc oxide; that the words "Green Seal" denote to the trade and to the purchasing public a high grade white zinc, and the words "Vieille Montagne" denote to the trade and to the purchasing public a zinc oxide commercially pure and one manufactured and sold by the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 3. That the aforesaid labels used by the respondent under the circumstances above set forth are false, deceptive and misleading and are calculated and designed to and do deceive the trade and the general public into believing that the said product is composed wholly of zinc oxide and is also the well-known and unadulterated product of the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne, whereby the said respondent has been able to pass off its products, described in paragraph 2 herein as and for the product of said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 4. That for more than one year immediately preceding the issuance of this complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 herein, a product containing zinc and other pigments; that upon the commercial containers, in which the respondent sells as aforesaid this said product to the trade and the purchasing public, the respondent places certain false and misleading labels to indicate and describe the contents of said containers; and that some of these said labels are substantially as follows:

(*a*)

"FRENCH
GREEN (SEALS) SEAL
Cherry Hill Paint Co. Brooklyn, New York
WHITE ZINC
Ground in Refined Linseed Oil."

(*b*)

"FRENCH ZINC
GREEN SEAL
Ground in Refined Linseed Oil."

(*c*)

"BEST AMERICAN
GREEN (EAGLE) SEAL
WHITE ZINC
Ground in Refined Linseed Oil."

That the term "Green Seal," when used to describe "White Zinc" signifies to the trade and to the purchasing public a high grade of white zinc, that the fact is that the product, sold by the said respondent in the said commercial containers and under labels identical with or similar to the labels (*a*), (*b*) and (*c*) above set forth, is composed of not more than about 20 per cent of white zinc.

PAR. 5. That the aforesaid labels used by the respondent under the circumstances above set forth in paragraph 4 are false, deceptive and misleading and are calculated and designed to and do deceive the trade and the general public into believing that the said products sold under the labels mentioned and described in said paragraph 4 are composed wholly of commercially pure zinc oxide.

PAR. 6. That for more than one year immediately preceding the issuance of this complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 herein, a product upon the commercial containers in which the respondent sells as aforesaid this said product to the trade and to the purchasing public, the respondent places certain false and misleading labels to indicate and describe their contents, and that some of these said labels are substantially as follows:

(*a*)

"AMERICAN
WHITE LEAD
Ground in Refined Oil
Made of the Best and Purest Materials."

(*b*)

"STANDARD
This Lead is Manufactured of the
BEST
and
Purest Materials
Bleached Linseed Oil
Only Original H. W. Dolson Process
WHITE LEAD."

That the term "White Lead," when used in labels placed upon commercial containers of pigments, signifies to the trade and to the purchasing public pigments composed wholly of commercially pure basic lead carbonate or basic lead sulphate; that the product of the said respondent offered by it for sale and sold in the said commercial containers upon which it places the labels identical with or similar to the labels set out in this paragraph contains little or no basic lead carbonate or basic lead sulphate.

PAR. 7. That said labels used by the respondent, under the circumstances above set forth in paragraph 6, are false, deceptive and misleading and are calculated and designed to and do deceive the trade and the general public into believing that the said products sold under the labels mentioned and described in said paragraph 6 are composed wholly of commercially pure basic lead carbonate or basic lead sulphate.

PAR. 8. The above alleged acts and things done by respondent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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 respondent, John McQuade & Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provision of the said act.

The respondent, John McQuade & Co., Inc., having entered its appearance by John McQuade, its president, and William L. Long, as secretary, and having filed its answer in the form of a letter dated December 19, 1922, addressed to Federal Trade Commission, Washington, D. C., and signed by John McQuade & Co., Inc., by John McQuade, president, in which no denial of the charges of the complaint was made, and having, by a letter dated January 5, 1923, addressed to Charles Melvin Neff and signed by John McQuade & Co., Inc., by John McQuade as president and William L. Long as secretary, admitted as true the allegations of the complaint herein, and having signed a stipulation admitting certain facts as true in lieu of testimony, thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and having read the above-mentioned complaint, answer, letters and 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. That the respondent, John McQuade & Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York; that its principal office and place of business is located at 134-136 Classon Avenue, in the borough of Brooklyn, in the city and State of New York.

That at all the times mentioned in said complaint, the respondent was, ever since has been and now is, engaged in the business of manufacturing and selling in interstate commerce to wholesalers and dealers located in other States of the United States and the District of Columbia, paints, oil colors, enamels, oil finishes, zinc, varnishes, white lead, lead compositions and other similar goods, wares and merchandise; that at all the times mentioned in said complaint there was, ever since has been and now is, a constant current of trade and commerce in said and similar products between and among the various States and Territories of the United States and the District of Columbia, and particularly from the said city and State of New York to and into and among the various other States and Territories of the United States and the District of Columbia; that in the course of its said business the said respondent, at all the times mentioned in the said complaint, was, ever since has been and now is, in competition with other corporations, partnerships and individuals engaged in the manufacture and sale, either or both, of said and similar products in and among the various States and Territories of the United States and the District of Columbia.

PAR. 2. That for more than one year immediately preceding the issuance of the said complaint the respondent has manufactured, and sold in the manner and places set out in paragraph 1 of these findings as to the facts, a product upon the commercial containers of which the respondent placed labels, of one of which the following is substantially a correct copy:

" FRENCH WHITE ZINC
GREEN SEAL
No. 1
ZINC
FROM THE
VIELLE MONTAGNE CO.
PARIS "

That the name " Vieille Montagne " is a name commonly applied by the trade to the white zinc products manufactured and sold to the trade by the " Societe des Mines & Fonderies de Zinc de la Vieille Montagne," which, at all the times mentioned in said complaint, was, ever since has been and now is, located and engaged in business at Angleur par Chenee Belgium, an internationally known and long established manufacturer of high-grade white zinc containing no adulterants whatsoever; that the product manufactured by the respondent and sold by it under the labels mentioned above, and particularly under the one above set forth, as and for the product of the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne, contains no more than approximately 20 per cent of zinc oxide; that the words "Green Seal" denote to the trade and to the purchasing public a high-grade white zinc, and the words "Vieille Montagne" denote to the trade and to the purchasing public a zinc oxide commercially pure and one manufactured and sold by the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 3. That the aforesaid labels used by the respondent under the circumstances above set forth are false, deceptive and misleading, and are calculated and designed to, and do, deceive the trade and the general public into believing that the said product is composed wholly of zinc oxide and is also the well known and unadulterated product of the said Societe des Mines & Fonderies de Zinc de la Vieille Montagne, whereby the said respondent has been able to pass off its products, described in paragraph 2 herein, as and for the product of said Societe des Mines & Fonderies de Zinc de la Vieille Montagne.

PAR. 4. That for more than one year immediately preceding the issuance of the said complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 herein, a product containing zinc and other pigments; that upon the commercial containers, in which the respondent sells as aforesaid, this said product to the trade and to the purchasing public, the respondent places certain false and misleading labels to indicate and describe the contents of said containers; and that some of these labels are substantially as follows:

(a) "FRENCH
GREEN [Seals] SEAL
Cherry Hill Paint Co. Brooklyn, New York
WHITE ZINC
Ground in Refined Linseed Oil."

(b) "FRENCH ZINC
GREEN SEAL
Ground in Refined Linseed Oil."

(c) "BEST AMERICAN
GREEN [Eagle] SEAL
WHITE ZINC
Ground in Refined Linseed Oil."

That the term "Green Seal," when used to describe white zinc, signifies to the trade and to the purchasing public a high grade of white zinc; that the fact is that the product sold by the said respondent in the said commercial containers and under the labels identical with or similar to the labels (*a*), (*b*) and (*c*) above set forth, is composed of not more than 20 per cent of white zinc.

PAR. 5. That the aforesaid labels used by the respondent, under the circumstances above set forth in paragraph 4, are false, deceptive and misleading, and are calculated and designed to, and do, deceive the trade and the general public into believing that the said products sold under the labels mentioned and described in said paragraph 4 are composed wholly of commercially pure zinc oxide.

PAR. 6. That for more than one year immediately preceding the issuance of this complaint, the respondent has produced, and sold in the manner set forth and described in paragraph 1 of these findings as to the facts, a product upon the commercial containers in which the said respondent sells as aforesaid this product to the trade and to the purchasing public, the respondent places certain false and misleading labels to indicate and describe their contents, and that some of these said labels are substantially as follows:

(*a*)

"AMERICAN
WHITE LEAD
Ground in Refined Oil
Made of the Best and Purest Materials."

(*b*)

"STANDARD
This Lead is Manufactured of the
BEST
and
Purest Materials
Bleached Linseed Oil
Only Original H. W. Dolson Process
WHITE LEAD."

That the term "White Lead," when used in labels placed upon commercial containers of pigments, signifies to the trade and to the purchasing public, pigments composed wholly of commercially pure basic lead carbonate or basic lead sulphate; that the product of the said respondent offered by it for sale, and sold, in the said commercial containers upon which it places the labels identical with or similar to the labels set out in this paragraph, contains little or no basic lead carbonate or basic lead sulphate.

1 Order.

PAR. 7. That the said labels used by the respondent, under the circumstances above set forth in paragraph 6, are false, deceptive, and misleading, and are calculated and designed to, and do, deceive the trade and the general public into believing that the said product sold under the labels mentioned and described in said paragraph 6 are composed wholly of commercially pure basic lead carbonate or basic lead sulphate.

PAR. 8. That the above-alleged acts and things done by said respondent are all to the prejudice of the public and to the 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.

CONCLUSION.

That the methods of competition set forth in the foregoing findings of fact, under the circumstances therein set forth, are unfair methods of competition in interstate commerce and 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.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the respondent, John McQuade & Co., Inc., had been, and was at the time of the issuance of the said complaint, using 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," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by John McQuade, its president, and William L. Long, as secretary, and having filed its answer to the said complaint, in which no denial of the charges of the complaint was made, and having admitted as true the allegations of the complaint herein, and having, in lieu of testimony, filed a stipulation admitting as true substantially all the allegations of the complaint, and the Commission being duly advised in the premises, and upon its consideration thereof having made its report in writing, wherein it stated its findings as to the facts and its conclusion that the respondent has 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 said respondent, John McQuade & Co., Inc., its officers, directors, agents and employes, cease and desist—

1. From selling, offering for sale or advertising for sale, or labeling, or otherwise describing or representing, in interstate commerce, to the trade or public, any of its zinc as "Vielle Montagne," "Vieille Montagne," or "V. M." zinc, unless the same is wholly composed of zinc manufactured by the Societe des Mines & Fonderies de Zinc de la Vieille-Montagne.

2. From selling, offering for sale or advertising for sale, or labeling or otherwise describing or representing, in interstate commerce, to the trade or public, any of its goods as "White Zinc," or as "zinc," unless the same is composed wholly of pure zinc oxide, and from using the words "Green Seal" in connection therewith unless such zinc oxide is actually and wholly a high grade white zinc.

3. From selling, offering for sale or advertising for sale, or labeling or otherwise describing or representing, in interstate commerce, to the trade or public, any of its goods as "White Lead," unless the same is composed wholly of basic lead carbonate or basic lead sulphate.

And it is further ordered, That the respondent, John McQuade & 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 hereinbefore set out.

FEDERAL TRADE COMMISSION
v.
MEYER J. LOEB AND HARRY J. LOEB, PARTNERS, TRADING UNDER THE NAME AND STYLE OF THE LOEB COMPANY,[1] AND JOSEPH HUTNER, TRADING UNDER THE NAME AND STYLE OF P. HUTNER & CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 834—February 15, 1923.

SYLLABUS.

Where an individual engaged in the manufacture, jobbing, and sale of women's wearing apparel falsely represented that certain coats offered by him were composed of a material well known to the trade and public as "Salt's Peco Plush"; with the result that a number of said coats were purchased by a retail dealer on the basis of said representation, were so advertised to the purchasing public, and were bought by it in the mistaken belief thereby induced; to the injury of the manufacturer of the genuine fabric and of manufacturers of garments thereof:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that Meyer J. Loeb and Harry J. Loeb, partners, trading under the name and style of The Loeb Company, and Joseph Hutner, trading under the name and style of P. Hutner & Company, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, in 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondents, Meyer J. Loeb and Harry J. Loeb, partners, trading under the name and style of The Loeb Company, own and operate a department store in the city of Washington, District of Columbia, and sell therefrom merchandise and commodities at retail in the District of Columbia, and in the conduct of such business are in competition with other persons, partnerships, and corporations similarly engaged. That respondent, Joseph Hutner, carries on business under the name and style of P. Hutner &

[1] By separate order dated February 15, 1923, the case was dismissed as to Respondents Meyer J. Loeb and Harry J. Loeb.

Company, with his principal place of business in the city of New York, State of New York, and is engaged in manufacturing, jobbing, and selling women's cloaks, coats, and dresses, and causes articles sold by him to be transported to the purchasers thereof, from the State of New York through and into other States of the United States and the District of Columbia, and in the conduct of such business is in competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Joseph Hutner, trading under the name and style of P. Hutner & Company, in the course of his business as set out in paragraph 1 hereof, in December, 1920, caused to be brought from the State of New York to the District of Columbia, certain women's coats, which he displayed in a sample room of a hotel, and which coats were offered for sale to dealers, and the respondents, Meyer J. Loeb and Harry J. Loeb, partners trading under the name and style of The Loeb Company, were solicited to buy a portion or all of said coats upon the false representation that said coats were made of a material known to the trade and purchasing public as "Salt's Peco Plush," although each of said respondents well knew that said coats were not made of said material, but were made of a material greatly inferior in quality and value to Salt's Peco Plush; that as a means of inducing prospective customers to purchase said coats, the said respondent, Joseph Hutner, offered to supply appropriate bona fide Salt's Peco Plush labels to be attached to any of said coats so sold, whereupon the said respondents, Meyer J. Loeb and Harry J. Loeb, partners as aforesaid, were induced to purchase, and did purchase, 73 of said coats, at an agreed price of $14.50 each, and the said respondent, Joseph Hutner, thereafter furnished bona fide Salt's Peco Plush labels for said coats.

PAR. 3. That the respondents, Meyer J. Loeb and Harry J. Loeb, partners, trading under the name and style of The Loeb Company, immediately after the purchase of the coats as set out in paragraph 2 hereof, arranged for a special sale of said coats, which was thereafter held in the store operated by them in the District of Columbia, and caused to be inserted in newspapers of general circulation, published in the District of Columbia, certain advertisements in which said coats were represented to be made of Salt's Peco Plush, which representation was false and misleading, in that said coats were not made of Salt's Peco Plush, but were made of material greatly inferior in quality and value to Salt's Peco Plush, as said respondents well knew, and which representation had the capacity or tendency to mislead and deceive the purchasing public, and the public was thereby induced to purchase said coats upon the mistaken belief that they were made of Salt's Peco Plush, a material which was well known to the purchasing public, as being of good quality and in great demand.

PAR. 4. That the sale by respondents of the coats, upon the false representation that they were made of Salt's Peco Plush, as set out in paragraphs 2 and 3 hereof, had the further capacity or tendency to destroy or lessen the demand on the part of the purchasing public, for coats made of genuine Salt's Peco Plush, and had the further capacity or tendency to create prejudices in the minds of the purchasing public, against coats made of that material, by causing erroneous impressions to prevail in the minds of the purchasing public concerning the value or utility of coats made of that material, and as a consequence thereof competitors of respondents, who sold coats made of genuine Salt's Peco Plush were injured in their business.

PAR 5. That the practices of respondents, and each of them, as hereinbefore set out, constitute an unfair method 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.

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 above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, Joseph Hutner, trading under the name and style of P. Hutner & Company, having entered his appearance herein and filed his answer to said amended complaint, evidence was thereupon introduced in support of the charges stated in the complaint and on behalf of said respondent, before an examiner for the Commission, which evidence was filed in the office of the Commission, and thereupon the matter came on for final hearing and the Commission having considered the amended complaint, the answer thereto, and the evidence adduced, and being fully advised in the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Joseph Hutner, at the time of the issuance of the original complaint herein, and prior thereto, was and had been engaged in the business of manufacturing, jobbing, and selling women's coats and other wearing apparel, and carried on such business under the name and style of P. Hutner & Company, having its principal place of business in the city of New York, State of New York. In the conduct of said business, said respondent caused the commodities sold by him to be transported to the purchasers thereof from the State of New York through and into other States of the United States and the District of Columbia, and was in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Joseph Hutner, trading under the name and style of P. Hutner & Company, in December, 1920, had in his employ as manager and house salesman one Abe Shensel, and as traveling salesman one William Goodman, who brought to the District of Columbia and to cities in the adjoining States of Maryland and Virginia women's coats fabricated of plush, which coats were carried in trunks and unpacked and displayed in sample rooms of hotels, and retail dealers were solicited to purchase said coats. That said respondent, Joseph Hutner, directed his said salesmen to represent to customers and prospective customers that the coats so offered for sale by them had been fabricated of a material well known to the public as "Salt's Peco Plush," although such coats were made of a material other than Salt's Peco Plush, and confirmed the representation in that respect made by his salesmen to the respondent The Loeb Company.

PAR. 3. That Salt's Peco Plush is now made in America by the Salt's Textile Company, Inc., which in 1893 acquired the American rights to manufacture the plushes which had been originated in England in 1829 by Sir Titus Salt. That the American manufacturer of such material by extensive advertising has caused Salt's Peco Plush to become well known to the manufacturers of and dealers in women's plush coats, and to the public who purchase in the course of retail trade garments made from that material.

PAR. 4. That on December 8, 1920, the salesmen for the respondent, Joseph Hutner, by representing that the coats offered for sale by him were made of Salt's Peco Plush, induced The Loeb Company, proprietors of a retail store in the District of Columbia, to purchase 73 of said coats, which coats were described in the invoice made out by said salesman as having been made of Salt's Peco Plush, and The Loeb Company thereupon represented in the advertisement which it caused to be published in a newspaper of general circulation in the District of Columbia that said coats were made of Salt's Peco Plush, and the purchasing public in the District of Columbia were thereupon misled and deceived and induced to purchase said coats upon the mistaken belief that they were in fact made of Salt's Peco Plush.

PAR. 5. That the sale of women's coats by the manufacturers thereof, upon the representations that such coats are made of Salt's Peco Plush, although made of a material other than Salt's Peco Plush, has the capacity and tendency to destroy or lessen the demand upon the part of the purchasing public for coats made of genuine Salt's Peco Plush, and further has the capacity and tendency to prejudice the purchasing public against Salt's Peco Plush, thereby injuring the manufacturer of the genuine material in its business and reputation, and likewise injuring other manufacturers of coats made from the genuine material.

CONCLUSION.

That the practices of the respondent Joseph Hutner, trading under the name and style of P. Hutner & Company, under the conditions and circumstances described in the foregoing findings, were unfair methods of competition in interstate commerce and constituted a 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 amended complaint of the Commission, the answer of the respondent and the testimony and evidence submitted, and the Commission having made its findings as to the facts and its conclusion that the respondent Joseph Hutner, trading under the name and style of P. Hutner & 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 Joseph Hutner, trading under the name and style of P. Hutner & Company, cease and desist from representing to the purchasing public, or to prospective purchasers of coats manufactured and offered for sale by him, or purchased by him for resale, that such coats are made of Salt's Peco Plush, as a means of inducing the public to purchase such coats, or for any other purpose, unless such coats are in fact made of the product of the Salt's Textile Company, Inc., and of the genuine material known as Salt's Peco Plush.

It is further ordered, That the respondent within sixty (60) days after the date of the service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth by the Commission.

FEDERAL TRADE COMMISSION
v.
INTERNATIONAL PAINT & OIL COMPANY ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 734—February 26, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints and other products, including a coal tar distillate capable of being used for some of the same purposes as turpentine, named and labeled said product "tar-pen-tine" and so advertised the same, with a capacity and tendency thereby to mislead and deceive the purchasing public and induce the purchase thereof as and for turpentine:

Held, That such misleading designation of product, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the International Paint & Oil Company, hereinafter referred to as respondent, has been and is using unfair methods of competition 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 Commision, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the city of Peoria, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling paints, oils, etc., including a coal tar distillate which is capable of being used for some of the purposes for which turpentine can be used and to which it has applied the name of "Tarpentine" or "Tar-pentine," and causes products sold by it to be transported to the purchasers thereof from the State of Illinois through and into other States of the United States, and carries on the said business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in paragraph 2 hereof, places labels upon the containers in which the product "Tar-pentine" is marketed, and makes use of circular letters and other advertising matter which are given general circulation among those engaged in the paint and varnish trade throughout the several States, in which labels and advertising matter the claims are made, among others, that "Tar-pentine," the product described in paragraph 2 hereof, is superior to turpentine for use in the manufacture of paints, enamel and varnish, and costs only about one-half as much as turpentine and causes no injurious effects to workmen using same, and the request is made that prospective customers do not confound "Tar-pentine" with the so-called turpentine substitutes that the market is being flooded with.

PAR. 4. That "turpentine" has come into general recognition as the name for a resinous oil distilled from the sap of pine trees, which is widely used in the arts, as in the manufacture of varnishes, paints, etc., and is used also in medicines, and the name "tar-pentine" applied to the commodity manufactured and sold by respondent, as set out in paragraph 2 hereof, so nearly resembles "turpentine" that the purchasing public under the conditions which ordinarily prevail in the trade would be likely to be deceived by the name "tar-pentine" and be induced to purchase that product because of the similarity of its name to turpentine on the erroneous belief that "tar-pentine" was turpentine or similar to turpentine or a substitute for turpentine.

PAR. 5. That by reason of the facts recited, the respondent is using an unfair method 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.

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, International Paint & Oil Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, thereupon this proceeding came on for final hearing, 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 conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business, at the time of the issuance of the complaint herein, in the city of Peoria, in said State; that respondent later did business under the name of "Industrial Tar-Pentine Corporation," with R. N. West as secretary.

PAR. 2. That respondent is engaged in the business of manufacturing and selling paints, etc., including a coal tar distillate which is capable of being used for some of the purposes for which turpentine can be used, and to which it has applied the name of "Tarpentine" or "Tar-Pentine," and causes the products so sold by it to be transported to the purchasers thereof from the State of Illinois through and into other States of the United States, and carries on said business in direct, active competition with other persons, partnerships and corporations engaged in selling paints, oils, turpentine and similar products, who likewise cause such products to be transported from the States of their domicile to purchasers in other States, and who advertise, label and designate such products accurately.

PAR. 3. That respondent, in the course of its business as described in paragraph 2 hereof, places labels upon containers in which the product "Tar-Pentine" is marketed, and makes use of circular letters and other advertising matter which are given general circulation among those engaged in the paint and varnish trade throughout the several States, in which labels and advertising matter the claims are made, among others, that "Tar-Pentine," the product described in paragraph 2 hereof, is superior to turpentine for use in the manufacture of paints, enamels and varnishes, and costs only about one-half as much as turpentine, and causes no injurious effects to workmen using the same, and the request is made that prospective customers do not confound "Tar-Pentine" with the so-called turpentine substitutes with which the market is being flooded.

PAR. 4. That "turpentine" has come into general recognition as the name for a resinous oil distilled from the sap of pine trees, which is widely used in the arts, as in the manufacture of varnishes, paints, etc., and is used, also, in medicines, and the name "Tar-Pentine" applied to the commodity manufactured and sold by respondent, as set out in paragraph 2 hereof, so nearly resembles "turpentine" that the purchasing public, under the conditions which ordinarily prevail in the trade, would be likely to be deceived by the name "Tar-Pentine" and be induced to purchase that product because of the similarity of its name to turpentine on the erroneous belief that "Tar-Pentine" was turpentine.

16 Order.

CONCLUSION.

The practices of said respondent and its successor, the Industrial Tar-Pentine Corporation, and of B. C. Mason, its president, and R. N. West, its secretary, are, under the conditions and circumstances described in the foregoing findings, 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 its complaint and the answer of respondent, 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 respondent, International Paint & Oil Company, its successor, Industrial Tar-Pentine Corporation, its officers, directors, agents and employees, and R. N. West and B. C. Mason, do cease and desist:

From using the words "Tar-Pentine," "Tarpentine," or words of similar import, in connection with the sale or offer for sale of a commodity which is not turpentine.

FEDERAL TRADE COMMISSION

v.

EVERETT F. BOYDEN, TRADING UNDER THE NAME AND STYLE OF GEORGE E. BOYDEN & SON.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 689—March 9, 1923.

SYLLABUS.

Where an individual engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded and labeled their products with reference to composition or failed to brand and label the same at all in that respect; branded and labeled hosiery composed of cotton and wool in varying proportions as "Cashmere," thereby misleading a substantial part of the purchasing public into believing said goods to be composed of wool:

Held, That such branding and labeling, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Everett F. Boyden, trading under the name and style of George E. Boyden & Son, hereinafter referred to as respondent, has been and is using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That respondent carries on business at Providence, R. I., under the name and style of George E. Boyden & Son, and is engaged in the business of manufacturing and selling hosiery, and causes hosiery sold by him to be transported to the purchasers thereof, from the State of Rhode Island, through and into other States of the United States, and in carrying on such business is in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in paragraph 1 hereof, places on hosiery sold by him, made of cotton and wool in approximately equal parts, and upon the boxes in which such hosiery is eventually offered for sale by retail dealers to the purchasing public, the label "Cashmere," which label is false and misleading and is calculated to and does mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondent is using an unfair method 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.

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, Everett F. Boyden, trading under the name and style of George E. Boyden & Son, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered his appearance by his attorneys and filed his answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, 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 and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade 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.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Everett F. Boyden, is now and was at all the times mentioned in the complaint engaged at Providence, R. I., under the name and style of George E. Boyden & Son, in the business of manufacturing and selling hosiery and in causing same to be shipped and transported to the purchasers thereof from the State of Rhode Island through and into other States of the United States pursuant to such sales, in competition with other corporations, copartnerships, and individuals engaged in similar commerce between and among the States of the United States.

PAR. 2. That the respondent until he learned of this investigation by the Commission about July 1, 1920, in the conduct of his business as described in paragraph 1 herein, sold and shipped hosiery which was made of cotton and wool in varying proportions, which he labeled and branded, and in packages or containers which he labeled and branded "Cashmere." That dealers purchasing this hosiery from respondent, or from respondent's customers, labeled and branded, or in packages or containers labeled and branded as aforesaid, offered and sold it so labeled and branded to the general purchasing public. That neither the said hosiery nor the boxes containing it were labeled, advertised, or branded with any other word or words to indicate the character, kind, or grade of material or materials entering into the manufacture of such hosiery.

PAR. 3. That the word "Cashmere," when applied to hosiery without any other word or words descriptive of the character, kind, or grade of material or materials, is understood by the general purchasing public to mean hosiery made entirely of a high-grade pure wool.

PAR. 4. That many of respondent's competitors are now and were at and during the times mentioned engaged in the sale of hosiery to persons in States other than those in which their principal factories or places of business are and were located, and in causing hosiery so sold to be transported from the States in which their principal factories or places of business are and were located through and into other States of the United States pursuant to such sales. That many such competitors, prior to July 1, 1920, sold and shipped in said commerce between the States of the United States hosiery made entirely of wool, which hosiery and the packages or containers for which are labeled, advertised, and branded "Cashmere" without any other word or words descriptive of the character, kind, or grade of material of which such hosiery is made.

PAR. 5. That many of respondent's competitors in the course of commerce between the States as described in paragraph 4 herein, prior to July 1, 1920, sold and shipped and are now selling and shipping hosiery made of wool and cotton in varying proportions, which hosiery and the packages or containers for which are labeled, advertised, and branded in some instances with no word or words descriptive of the material or materials entering into the manufacture of such hosiery, and in other instances labeled, advertised, and branded so as to indicate that the hosiery is made of cashmere and cotton, or wool and cotton.

PAR. 6. The labels or brands under which the respondent sells and ships hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to the composition of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete un-

20 Order.

fairly with goods of his competitors in interstate commerce, who, as set forth in paragraphs 4 and 5 above, sell hosiery made entirely of wool; or hosiery made wholly or in part of other materials than those named, and labeled or branded so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 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 the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, that the 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, Everett F. Boyden, trading under the name and style of George E. Boyden & Son, and his officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly using as labels or brands on hosiery sold by him, or on the containers thereof, or in advertisements thereof, the word "Cashmere," unless the hosiery so labeled, branded, or advertised be composed entirely of wool of a high grade.

Respondent is further ordered to file a report in writing with the Commission sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION
v.
SIMON ADELSON, TRADING UNDER THE NAME AND STYLE OF UNITED STATES REFINING COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 716—March 9, 1923.

SYLLABUS.

Where an individual engaged in the manufacture and sale of paints and other products advertised and labeled two products as "Old Government Paint, Ground in Pure Linseed Oil—Greatest Covering Capacity—Richest Color—Longest Wearing," etc., and "OLD GOVERNMENT WHITE, Ground Finer and Will Cover More Surface and is Whiter than any Pure White LEAD," with the intermediate words so printed as probably to escape the attention of the casual observer; the fact being that said products were neither procured from nor made for the Government, nor made in accordance with any Government formula or specification, and were neither ground in pure linseed oil nor composed of pure white lead:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Simon Adelson, trading under the name and style of the United States Refining Company, hereinafter referred to as respondent, has been and is using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent carries on business at Cleveland, Ohio, under the name and style of the United States Refining Company, and is engaged in the business of manufacturing and selling paints and other products, and causes such products to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States; and in carrying on such business, respondent has been in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent, in the course of his business as described in paragraph 1 hereof, makes and has made use of false and deceptive advertising matter of and concerning commodities sold by him, and places upon the containers of such commodities deceptive labels, in that one of the commodities so sold by respondent has been described in such advertising matter and labels as "Old Government Paint, Ground in pure linseed oil—greatest covering capacity—richest color—longest wearing," etc., whereas such paint had not been ground in pure linseed oil, and was not procured from the Government or manufactured for its use, or manufactured in accordance with any Government formula or specifications; and that as a means of procuring the sale of another commodity, respondent used other advertising matter descriptive of such commodity, and placed upon the containers thereof, labels, which advertising matter and labels contained the statement, "Old Government White, ground finer and will cover more surface and is whiter than any pure white lead," with the first three words and the last word in large bold face type and the other words of such statement in small inconspicuous type, so that a casual observer would be likely to see only the words "Old Government White Lead," and would be deceived thereby into believing that the product was white lead, whereas such commodity was not pure white lead and has not been procured from the Government or manufactured for its use, and was not made in accordance with any Government formula or specifications; that various other statements of the same general character were contained in advertising matter and labels used by respondent in the course of his said business, all of which statements were calculated to and did mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondent is using an unfair method 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.

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, Simon Adelson, trading under the name and style of United States Refining Company, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein, a statement of the facts was agreed upon by counsel for the Commission and counsel for respondent, to be taken in lieu of evidence.

And thereupon this proceeding came on for final hearing, 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:

PARAGRAPH 1. That respondent carries on business at Cleveland, Ohio, under the name and style of the United States Refining Company, and is engaged in the business of manufacturing and selling paints and other products and causes such products to be transported to the purchasers thereof from the State of Ohio through and into other States of the United States; and in carrying on such business respondent has been, and now is, in direct, active competition with other persons, partnerships, and corporations engaged in selling paints, pure white lead, and other products, who likewise cause such products to be transported from the States of their domicile to purchasers in other States, and who advertise and label such products accurately.

PAR. 2. That respondent, in the course of his business as described in paragraph 1 hereof, makes and has made use of advertising matter of and concerning commodities sold by him, and places upon the containers of such commodities deceptive labels, in that one of the commodities so sold by respondent has been described in such advertising matter and labels as "Old Government Paint, Ground in pure linseed oil—greatest covering capacity—richest color—longest wearing," etc.; whereas such paint has not been ground in pure linseed oil, and was not procured from the Government or manufactured for its use, or manufactured in accordance with any Government formula or specifications; and that as a means of procuring the sale of another commodity, respondent used other advertising matter descriptive of such commodity, and placed upon the containers thereof labels, which advertising matter and labels contained the statement, "Old Government White, ground finer and will cover more surface and is whiter than any pure white lead," with the first three words and the last word in large, bold face type, and the other words of such statement in small, inconspicuous type, so that a casual observer would be likely to see only the words "Old Government White Lead," and would be deceived thereby into believing that the product was white lead, whereas such commodity was not pure white lead. Such product has not been procured from the Government or manufactured for its use, and was not made in accordance with any Government formula or specifications.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, 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 the respondent, the statement of facts agreed on by counsel for the Commission and counsel for respondent, 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, Simon Adelson, trading under the name and style of United States Refining Company, do cease and desist:

(1) From using the word "Government" in advertising matter, on labels, or otherwise as describing commodities manufactured or offered for sale when such commodities have not been procured from or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, otherwise describing, or advertising a commodity as:

(*a*) "Old Government Paint," or by so using words of similar import, when such paint is not, in fact, procured from the United States Government or manufactured by it or for its use;

(*b*) Containing "white lead" or other ingredients which in fact it does not contain;

(*c*) Having been manufactured, prepared or ground in "linseed oil" or other ingredients named when such ingredients have not been so used.

And it is further ordered, That the respondent, Simon Adelson, trading under the name and style of United States Refining Company, shall within sixty (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 out.

FEDERAL TRADE COMMISSION
v.
T. S. SOUTHGATE, TRADING UNDER THE NAME AND STYLE OF T. S. SOUTHGATE & CO., AND LEXINGTON GROCERY CO., AND TAYLOR BROS. & CO., INC., TRADING UNDER THE NAME AND STYLE OF SOUTHERN SALT CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 935—March 9, 1923.

SYLLABUS.

Where two corporations, jointly engaged as the Southern Salt Co. in dealing in imported ground rock salt of a quality inferior to that made in domestic plants by the evaporation process and therefore preferred to the foreign product, and their broker or sales agent; in offering and selling the same,

(*a*) Advertised, listed, and described their salt as "No. 1 Star Brand Common Fine Salt," "Common Fine," "Fine," and "Highest Grade of Salt Obtainable," and offered the same at 2 cents per hundred pounds under the market price;

(*b*) Branded the sacks and other containers thereof conspicuously with the words "Southern Salt Co., Norfolk, Virginia, No. 1 Fine Salt"; and

(*c*) Failed in the advertising, sale, and distribution of such salt to disclose its true character as an imported, ground rock salt;

With the result that the trade and purchasing public were deceived and misled into buying said salt as and for a domestic product made by the evaporation process and of the highest quality obtainable:

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

COMPLAINT.

Acting in the public interest 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 charges that T. S. Southgate, trading under the name and style of T. S. Southgate & Co., and the Lexington Grocery Co. and Taylor Bros. & Co., Inc., trading under the name and style of Southern Salt Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Said respondent, T. S. Southgate, conducts his business of merchandise broker under the style and title of T. S. Southgate & Co., with his principal office and place of business in the Southgate Terminal Building, Norfolk, Va. He is now and at all times hereinafter mentioned has been engaged in the general brokerage business and distributes among other products salt for the Southern Salt Co., which is a trade name of the said respondent, Lexington Grocery Co., and said respondent Taylor Bros. & Co., Inc., the said Lexington Grocery Co. being a corporation organized under the laws of the State of North Carolina, with principal office and place of business at Lexington, N. C., and the said Taylor Bros. & Co., Inc., being a corporation organized under the laws of the State of Virginia, with principal office and place of business at Norfolk, Va., both engaged in the business of buying and selling groceries and other food products in a wholesale way, and in the course of the business transacted by the said respondents, the said salt is sold to wholesale grocers and manufacturers by the said respondent, T. S. Southgate, and when so sold was and is transported from Norfolk, Va., and other Atlantic seaports to the purchasers thereof at points in the various States of the United States. In the course and conduct of this said business said respondents are in competition with other individuals, partnerships and corporations similarly engaged in the purchase and sale of salt in interstate commerce.

PAR. 2. The said respondents, Lexington Grocery Co. and Taylor Bros. & Co., Inc., in the year 1921 began trading jointly under the name and style of Southern Salt Co. for the purpose of purchasing, selling, and distributing certain cargoes of ground rock salt imported from Germany, and the said T. S. Southgate, trading under the name and style of T. S. Southgate & Co., was employed as sales agent for said purpose, all of said sales of salt being under the supervision and direction of said respondents, Lexington Grocery Co. and Taylor Bros. & Co., Inc. The said T. S. Southgate, under the name and style of T. S. Southgate & Co., solicited orders for, and sold, said salt as exclusive agent for respondents, Lexington Grocery Co. and Taylor Bros. & Co., Inc., trading under the name and style of Southern Salt Co. as aforesaid, through circular letters circulated through the United States mail to prospective customers at various points in the several States and in said circulars advertised said ground rock salt as "No. 1 Star brand common fine salt" at 2 cents under the market price, and further described said salt as "Common Fine" and as "The Highest Grade of Salt obtainable." Respondents caused said rock salt, when so sold, to be shipped and delivered to the purchasers thereof in sacks and other containers branded "Southern Salt Co., Norfolk, Va., No. 1 Fine Salt."

PAR. 3. The said ground rock salt purchased, advertised, sold, and distributed by said respondents as aforesaid is inferior in quality to salt manufactured by the evaporation process in the various salt plants in the United States, and the words "Common Fine Salt," "Common Fine," "Fine," and "Highest Grade of Salt obtainable," used by said respondent T. S. Southgate in said circulars and brands describing said ground rock salt as aforesaid signify to, and are understood by, a substantial part of the trade and purchasing public to mean salt manufactured by the evaporation process and are calculated and have the capacity and tendency to mislead and deceive the trade and purchasing public and to induce them to purchase said ground rock salt in the belief that it is salt manufactured by the evaporation process as aforesaid.

PAR. 4. For a number of years salt manufactured in the United States has been preferred by the trade and the consuming public and hence the advertising in said circular letters by said respondent, T. S. Southgate, as aforesaid, that the said ground rock salt was "Common Fine Salt," without disclosing the fact that such salt was imported from Germany, was calculated to and had the capacity and tendency to mislead and deceive the trade and purchasing public and to induce them to purchase said salt in the belief that it was manufactured in the United States.

PAR. 5. There are a considerable number of manufacturers of salt in the United States who manufacture salt by the evaporation process and advertise and sell their product as "Common Fine Salt" in competition with said respondents. There are also a number of salt manufacturers who manufacture salt from rock salt who advertise and sell their product as "Rock Salt" and who do not attempt to advertise or sell said rock salt as "Common Fine Salt" or in any other way attempt to deceive or mislead the purchasing public or induce them to believe that said rock salt is of the same quality as salt manufactured by the evaporation process.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.[1]

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, T. S. Southgate, trading under the name and style of T. S. Southgate & Co.; Lexington Grocery Co., and Taylor Bros. & Co., Inc., trading jointly under the name and style of Southern Salt Co., charging them with the use of unfair

[1] This case was subsequently reopened, and the complaint dismissed without prejudice, and without assignment of reasons. Such action, however, took place too late to permit the withdrawal of the case from this volume.

methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances and filed their answers herein in which they consented to accept an order by the Commission to cease and desist from the unfair practices alleged in said complaint, and having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by and between respondents and counsel for the Commission that the Federal Trade Commission may take such agreed statement of facts as the facts in this proceeding before the Federal Trade Commission and in lieu of testimony before said Commission in support of the charges stated in said complaint or in opposition thereto; that said respondents waive their rights to file briefs and present oral argument to said Commission in this proceeding, and that said Commission may proceed further upon such agreed statement of facts to make its report, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

And the Federal Trade 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.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent Lexington Grocery Co. is a corporation organized and existing under and by virtue of the laws of the State of North Carolina, having its principal office and place of business in the city of Lexington and State of North Carolina, and its business is the purchasing, selling, and distributing, at wholesale, groceries and other food products, including salt. Respondent Taylor Bros. & Co., Inc., is a corporation organized under and by virtue of the laws of the State of Virginia, having its principal office and place of business in the city of Norfolk and State of Virginia, and its business is the purchasing, selling, and distributing, at wholesale, groceries and other food products, including salt. Respondent T. S. Southgate is an individual engaged in the business of general merchandise broker under the unincorporated trade name and style of T. S. Southgate & Co., having his principal office and place of business in the city of Norfolk and State of Virginia.

PAR. 2. Respondents Taylor Bros. & Co., Inc., and Lexington Grocery Co. at all times since the month of July, 1921, traded jointly under the unincorporated trade name and style of Southern Salt Co. in conducting a business of purchasing, selling, and distributing, at wholesale, to manufacturers, jobbers, and other purchasers throughout the United States certain cargoes of ground rock salt imported from Germany. In carrying on said salt business under the name and style of Southern Salt Co., respondents Lexington Grocery Co. and Taylor Bros. & Co., Inc., employed at all times since July, 1921, respondent T. S. Southgate, trading as aforesaid under the name and style of T. S. Southgate & Co., as their broker and agent in selling and distributing said ground rock salt. In conducting the business of dealing in said ground rock salt, respondents, and each of them trading as aforesaid, solicited orders for and sold large quantities of said ground rock salt by means of traveling salesmen and circular letters sent to jobbers, manufacturers, and other prospective customers at various points in the several States of the United States. Pursuant to the orders received for said ground rock salt, respondents caused said ground rock salt so sold to be transported in sacks and other containers from the city of Norfolk and State of Virginia through and into other States of the United States to the purchasers thereof, and in so carrying on the sale and distribution of said ground rock salt were in direct active competition with many other persons, partnerships, and corporations similarly engaged in the sale and distribution of salt in interstate commerce.

PAR. 3. Respondents, and each of them, through the aforesaid traveling salesmen represented, and in the said circular letters they advertised, listed, and described said ground rock salt as "No. 1 Star Brand Common Fine Salt," at 2 cents per 100 pounds under the market price, and further represented, advertised, listed, and described said ground rock salt as "Common Fine," "Fine," and as the "Highest Grade of Salt Obtainable," and respondents caused the said sacks and other containers in which said ground rock salt was shipped and delivered to the purchasers thereof to be branded conspicuously with the words "Southern Salt Co., Norfolk, Virginia, No. 1 Fine Salt."

PAR. 4. The said ground rock salt dealt in as aforesaid by respondents is not manufactured or produced by the evaporation process and it is inferior in quality to salt manufactured by the evaporation process in the various salt plants in the United States and sold to the trade and consuming public, and said ground rock salt is not the highest grade of salt obtainable. The aforesaid representing, advertising, listing, describing, and branding of said ground rock salt as "No. 1 Star Brand Common Fine Salt," "Common Fine Salt," "Common Fine," "Fine," "No. 1 Fine Salt," and "Highest Grade of Salt Obtainable," signified to the trade and purchasing public in the United States, and caused said trade and purchasing public to believe, that said ground rock salt is the highest grade of salt obtainable and that it is salt manufactured by the evaporation process. In advertising, selling, and distributing the said ground rock salt, as aforesaid, respondents did not disclose to the trade and purchasers thereof that said salt is ground rock salt imported from Germany, and that the same is not manufactured or produced by the evaporation process in the United States. Salt manufactured or produced in the United States has for a number of years last past, and at all times herein mentioned, been preferred by the trade and consuming public over salt imported from Germany, and a substantial part of the trade and consuming public understand and believe that salt which is not marked, branded, or represented as having been imported from a foreign country is salt manufactured or produced in the United States.

PAR. 5. The aforesaid representing, advertising, listing, describing, and branding of said ground rock salt by respondents as "No. 1 Star Brand Common Fine Salt," "Common Fine Salt," "Common Fine," "Fine," and "Highest Grade of Salt Obtainable," and "Southern Salt Co., Norfolk, Virginia, No. 1 Fine Salt," without disclosing as aforesaid that said salt so represented is ground rock salt imported from Germany, is calculated and has and had the capacity and tendency to, and did, mislead and deceive the trade and purchasing public into the belief that said ground rock salt is the highest grade of salt obtainable and that it is salt manufactured or produced in the United States by the aforesaid evaporation process, and cause the said trade and purchasing public to purchase said salt in that belief.

PAR. 6. There are a large number of manufacturers and producers of salt in the United States who manufacture and produce salt by the said evaporation process and advertise and sell the salt so manufactured and produced in commerce among the several States of the United States as "Common Fine Salt," "Common Fine," "Fine," and "No. 1 Fine Salt," in competition with respondents. There are also a number of manufacturers and distributors of rock salt in competition with respondents who do not represent said rock salt as "Common Fine Salt," "Common Fine," "Fine," or "No. 1 Fine Salt," or in any way attempt to mislead or deceive the purchasing public or induce purchasers to believe that said rock salt is salt manufactured by the evaporation process and/or that said rock salt is of the same quality as the salt manufactured by the evaporation process. There are also a number of competitors of respondents who import from Germany rock salt and ground rock salt and sell the same in commerce among the several States of the United States, and who disclose to the purchasing public that the salt so imported, sold, and distributed is ground rock salt, or rock salt, as the case may be, and that the same was imported from Germany.

CONCLUSION.

The practices of said respondents, under the conditions and circumstances described 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 TO CEASE AND DESIST.[1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the 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 respondent T. S. Southgate, trading under the name and style of T. S. Southgate & Co., his agents, representatives, servants, and employees; respondents Lexington Grocery Co. and Taylor Bros. & Co., Inc., trading jointly under the name and style of Southern Salt Co., their officers, agents, representatives, servants, and employees, do cease and desist from directly or indirectly:

1. Advertising, describing, or representing in circulars, labels, brands, or otherwise as "Common Fine" or "Fine" salt sold and distributed by respondents in commerce unless such salt is in fact manufactured or produced by the evaporation process.

2. Advertising, describing, or representing in circulars, labels, brands, or otherwise any salt sold and distributed by respondents in commerce as being "the highest grade of salt obtainable," when such representation is not true in fact.

3. Selling or offering for sale in commerce any salt imported from Germany or any other foreign country without marking, labeling, branding, or otherwise disclosing to the purchasers thereof, that said salt was imported from Germany or such other foreign country as the case may be.

It is further ordered, That respondents, within sixty (60) days from the notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.

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[1] See footnote on p. 30.

FEDERAL TRADE COMMISSION

v.

SIZZ CHEMICAL CO. ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 942—March 9, 1923.

SYLLABUS.

Where a concern engaged in the manufacture and sale of a cleansing compound called "Sizz," which it sold and distributed through a system under which its so-called "State Agents" secured and contracted with "County Managers" for the sale thereof to the general public; for the purpose and with the effect of deceiving and misleading the public with respect to the value thereof as a cleansing agent, among other things

(a) Represented that said product contained no alkali, the fact being that a substantial portion thereof consisted of alkali and common salt;

(b) Sent to prospective customers and to prospective agents or representatives sample boxes of "Sizz" tablets with a piece of iodine-stained cloth, together with a circular stating "no doubt you know how difficult it is to remove iodine," and inviting them to remove the stains by rinsing the cloth in a solution of hot water, soap and "Sizz" tablets; with a tendency thereby to mislead said customers and agents or representatives, the fact being that such stains can be as readily removed by the use of hot water alone;

(c) Falsely represented that said product possessed remarkable cleansing power and purported to demonstrate such alleged fact through the use of a similar test, taking advantage of a popular misconception to the effect that iodine is as difficult to remove from cloth as from the skin; with the result that prospective purchasers were thereby deceived and induced to purchase said product;

(d) Falsely represented through its State Agents to prospective County Managers that money paid in advance by them pursuant to the provisions of its contracts for the handling and sale of said product by them would be refunded in case such product proved unsatisfactory; and

(e) By such demonstrations and representations brought about the sale of such product to said County Managers under such contracts:

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

COMPLAINT.

Acting in the public interest 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 charges that the Sizz Chemical Co., W. C. Milke, president and trustee; E. M. Hall, vice president; F. G. Schlueter, secretary-treasurer and trustee; Edw. Gotsch, trustee; and C. C. Cummings, trustee; hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Sizz Chemical Co., was organized under a declaration of trust with its principal office and place of business in the city of St. Louis in the State of Missouri, and the said respondents, W. C. Milke, E. M. Hall, F. G. Schlueter, Edw. Gotsch, and C. C. Cummings, are the officers and trustees of said company charged with the conduct of its affairs. Said company is now and at all times hereinafter mentioned has been engaged in the business of manufacturing and selling cleansing compounds including particularly a compound described as "Sizz," a tablet to be dissolved in water and used for cleaning clothing, rugs, and similar articles, and in the conduct of its said business said company causes its said product so manufactured and sold by it to be transported from the State of Missouri through and into other States of the United States to the purchasers thereof. In the course of said business said respondent continuously has been and is now in competition with other persons, partnerships, and corporations engaged in similar business in interstate commerce.

PAR. 2. Said respondent company, during the two years last past in the conduct of its said business as aforesaid, has sold and is now selling its said product through State agents to individuals throughout the several States designated by said respondent company as "County Agents" and has brought about the sale of said products through statements and representations contained in circular letters, posters, bulletins, booklets, and other literature sent through the mails to the prospective customers, as well as through verbal representations made by said State agents. Among said statements and representations was the statement to the effect that said product contains no alkali, and another was the statement to the effect that it possesses remarkable cleansing powers, and to demonstrate this cleansing power caused a cloth stained with iodine to be rinsed in a solution of said product and hot water with the result that the iodine stains were removed. Said statements, representations, and demonstrations are false and misleading and have the capacity and tendency to deceive prospective purchasers and induce them to purchase the said product in the belief that it contains no alkali and possesses remarkable cleansing powers, when as a matter of truth and fact said product contains a substantial percentage of alkali, which together with common table salt are the principal ingredients thereof, and hot water alone, without the assistance of said product will remove iodine stains from cloth.

PAR. 3. The above alleged acts and things done by respondent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it has reason to believe that the above named respondents, Sizz Chemical Co. et al., have been and now are using 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," and that a proceeding in respect to such alleged violation would be of interest to the public, the Commission fully stating its charges in that respect; and the respondents, through their attorney, Earl G. Broeg, having filed their answer to the complaint; and the attorneys for both sides having thereafter signed and filed an agreed statement of facts, with exhibits thereto attached, and having stipulated that the same should be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto, and that the said Commission might proceed further upon said stipulation of facts to make its report in said proceeding, stating its findings as to the facts and entering its order disposing of the proceeding; and the attorney for respondents having waived the submission of briefs and argument as to the law and the facts in said proceeding, and the Commission having duly considered the record and being fully advised in the premises, now makes this its report and findings as to the facts and conclusions of law:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Sizz Chemical Co., was organized under a declaration of trust with its principal office and place of business in the city of St. Louis in the State of Missouri, and the following persons, W. C. Milke, E. M. Hall, F. G. Schlueter, and C. C. Cummings, are the officers and trustees of said company, charged with the conduct of its affairs.

PAR. 2. That said respondents are now and at all times hereinafter mentioned have been engaged in the business of manufacturing and selling cleansing compounds, including particularly a compound described as "Sizz," a tablet to be dissolved in water and used for cleaning clothing, rugs, and similar articles, and in the conduct of their said business said company and its officers cause their said product so manufactured and sold by them to be transported from the State of Missouri through and into other States of the United States to the purchasers thereof. In the course of said business said respondents continuously have been and are now in competition with other persons, partnerships, and corporations engaged in similar business in interstate commerce.

PAR. 3. That the said respondents, during the two years last past, in the conduct of their business as aforesaid, have been and are now using the following plan in the sale and distribution of their product: That respondents have from time to time employed individuals designated by them as "State Agents"; that under the terms of the contract made by the respondents with said State Agents, a copy of which contract is hereto attached and made a part of this stipulation to the same extent and for all purposes as if it were stated verbatim, and referred to as Exhibit "1," [1] the State Agents were given the privilege of selling the products of the respondents to individuals within a State who are designated by respondent as "County Managers;" that under the terms of the contract said State Agents, as a compensation for selling to said County Managers, received one-half of the initial payment made by the aforesaid County Managers, but such compensation in no case was to exceed $100.

PAR. 4. That the aforesaid State Agents under and by virtue of the contract with the respondent company entered into contracts, copies of which are attached hereto and made a part of this stipulation to the same extent and for all purposes as if they were stated verbatim, and referred to as Exbihits "2" to "12," [1] inclusive, in and on behalf of the respondent with divers persons designated as County Managers in various States, to-wit—Indiana, Illinois, Wisconsin, Ohio, Kentucky, Michigan, and Pennsylvania; that by virtue of the contract aforesaid the County Manager agreed to buy a designated number of gross of respondents' product at $4.80 per gross, deliveries to be made from time to time as ordered by said County Manager; that the said County Manager paid in advance $2 per gross, the remaining sum being paid as the products were ordered; that said County Manager, under the contract, in a majority of cases, advanced to the respondents, in compliance with the contract, the sum of $200 on the purchase of 100 gross; that a further provision of the contract existing between the respondent and the County Managers was that the respondents would not sell their product in a specified territory allotted to said County Managers so long as the County Manager sold a designated number of gross per week therein.

[1] Not printed.

PAR. 5. That many County Managers, relying upon demonstrations, representations, and statements made by respondents and their agents, as herein set forth, entered into the contracts aforesaid for the purchase of respondents' product to be sold by them to the consuming public; that in reliance upon, and having confidence in, the aforesaid statements, and in compliance with the contracts made thereon, many County Managers advanced to said respondents various sums of money, the majority to the extent of $200, which the respondents have steadfastly refused to return.

PAR. 6. That the various County Managers, as shown by the various exhibits attached hereto and made a part hereof to the same extent and for all purposes as if quoted verbatim, did upon receiving the product of respondents under the terms of the contract make every reasonable, diligent, and necessary attempt to dispose of said product, but were unable to do so, with the result that the money advanced by them under the contract was a total loss.

PAR. 7. That among the further statements and representations made by State Agents of the respondents was a statement to the effect that respondents would refund the money advanced by said County Managers under the aforesaid contract in case the products of respondents did not prove satisfactory. Such a statement is wholly false and misleading in that the respondents have steadfastly refused to refund the money advanced by the County Managers on the contract aforesaid in the purchase of respondents' product.

PAR. 8. That in the circulars sent out by the respondents from time to time to prospective agents, customers, and representatives is contained the following paragraph:

A full box of SIZZ Laundry tablets contains 24 tablets. We are enclosing sample box with four tablets. We also inclose a small piece of percale with Iodine spots on it. No doubt you know how difficult it is to remove Iodine. Dissolve the inclosed tablets in one quart of HOT Water and add one-eighth bar of White laundry soap. Then rinse the piece of percale up and down in the HOT Mixture and the stains will quickly disappear leaving the cloth as bright as new. You will also find the mixture excellent for cleaning rugs, suits, woodwork, linoleum, etc.

The aforesaid statement has a tendency to mislead the prospective customer, agent, or representative, in that it is represented that iodine is difficult to remove from cloth, when as a matter of fact iodine can be removed just as readily by rinsing the cloth in hot water without the aid of respondents' products.

PAR. 9. That the aforesaid respondents, through their State Agents, have brought about the sale of their product to the aforesaid County Managers under the contract aforesaid, through statements and representations contained in the circulars, letters, posters, bulletins, booklets, and other literature sent through the mails as well as verbal representations; that among said statements and representations was a statement to the effect that respondents' product possesses remarkable cleansing power, and in demonstration of the cleansing power of their product, respondents have been and are taking advantage of a popular misconception, in that a common understanding prevails that iodine, being difficult to remove from the skin, is equally difficult to remove from cloth. In the course and conduct of respondents' sales to State Agents and County Managers and through them to consumers, demonstrations were given in which cloth stained in iodine was rinsed in hot water containing a solution of respondents' tablets, with the result that the iodine stains were removed. Such statement and representations are false and misleading and have the capacity and tendency to deceive prospective purchasers, and did deceive and induce them to purchase respondents' product in the belief that it possessed remarkable cleansing power, when as a matter of fact and truth hot water alone without the addition of respondents' product will just as readily remove iodine stains from cloth.

PAR. 10. That among the aforesaid statements and representations was a statement by respondents to the effect that their product contains no alkali, when as a matter of fact and truth it contains a substantial percentage of alkali, which, together with common salt, are the principal ingredients thereof.

PAR. 11. That the respondents placed in the hands of their agents, State and County, the literature and other advertising matter containing the false and misleading statements and representations aforesaid, well knowing and intending that such statements and representations would or should be used by said agents in disposing of respondents' product to the consuming public, and that said action on the part of respondents' agents was calculated to and did in fact deceive and mislead the public as to respondents' product as a cleansing agent.

CONCLUSION.

That the methods of competition described in the foregoing findings of fact in paragraphs 5 to 11, inclusive, constitute, 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.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above named respondents, Sizz Chemical Co., its officers and trustees, have been and now are using 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," and that a proceeding in respect to such alleged violations would be to the interest of the public, the Commission fully stating its charges in that respect; and the respondents through their attorney, Earl G. Broeg, having filed their answer to the complaint herein; and the attorneys for both parties having thereafter signed and filed an agreed statement of facts, with exhibits thereto attached, and having stipulated that the same should be taken in lieu of testimony before the Commission in support of the charges stated in the complaint and in opposition thereto, and that the said Commission might proceed further upon said stipulation of facts to make its report in said proceeding, stating its findings as to the facts and entering its order disposing of the proceeding; and the attorney for respondents having waived the submission of briefs and argument as to the law and the facts in said proceeding, and the Commission having duly considered the record and being fully advised in the premises; and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondents have 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," which said report is hereby referred to and made a part hereof;

Now, therefore, it is ordered, That the respondents, Sizz Chemical Co., its officers, agents, servants, and employes, forever cease and desist from:

(1) Representing by means of verbal statements or by statements on containers, circulars, or other advertising matter that respondents' products contain no alkali when in truth and fact said products do contain alkali.

(2) Making any demonstrations or representations to its agents or through them to the consuming public, or otherwise, which are calculated to create the impression that respondents' products have any value in removing iodine stains from any fabric.

(3) Making or permitting its agents to make any statements or representations to the effect that any money advanced to respondents

by their agents or representatives in the purchase of respondents' products will be refunded to them if the sale of respondents' products prove unsatisfactory, unless respondents in good faith intend to and do in fact comply with such statements or representations.

(4) Making any statement, representation, or demonstration that is calculated to mislead and deceive respondents' agents, representatives, and the purchasing public as to the merits of respondents' products.

It is further ordered, That the respondents within sixty (60) days after the date of the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth by the Commission.

FEDERAL TRADE COMMISSION

v.

NON-DERRICK DRILLING MACHINE CO., INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 293—March 14, 1923.

SYLLABUS.

Where a corporation organized for the purpose of manufacturing and operating a new type of drilling machine; in promoting the sale of its stock, published, circulated, and distributed advertising matter wherein it

(*a*) Misrepresented the construction, costs, capacity, and success achieved by said machine;

(*b*) Grossly misrepresented the prospects of the company as reflected by alleged progress made, and alleged profits in sight;

(*c*) Misrepresented the financial history of the enterprise, the reasons for a general solicitation of the public, and the business the corporation was claimed to be primarily engaged in; and

(*d*) Otherwise misrepresented the advantages of its stock as an investment:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Non-Derrick Drilling Machine Company, Inc., hereinafter referred to as the respondent, has been and now is using 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Non-Derrick Drilling Machine Company, Inc., is a corporation, existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office in the city of Pittsburgh, State of Pennsylvania; that the said respondent was incorporated the 22d day of June, 1917, and has an authorized capital of $200,000, divided into shares of the par value of $1 each.

PAR. 2. That 123,630 shares of the capital stock of the respondent have been issued, of which 101,000 shares have been issued to one W. A. McCausland for certain patents.

PAR. 3. That from the 22d day of June, 1917, the respondent, through its officers and agents, has sold respondent's capital stock and solicited subscriptions therefor throughout various States of the United States by means of advertisements, circular letters, pamphlets, and personal solicitation; but respondent has not yet engaged in actual business.

PAR. 4. That the respondent, Non-Derrick Drilling Machine Company, Inc., was organized and incorporated ostensibly for the purpose of manufacturing a certain device or apparatus for drilling holes for oil, gas, salt, and water, but the respondent has never manufactured any such device or apparatus.

PAR. 5. That since the 22d day of June, 1917, the stock of respondent, Non-Derrick Drilling Machine Company, Inc., has been offered and sold in interstate commerce in competition with divers other persons, firms, copartnerships, and corporations.

PAR. 6. That in connection with the sale and offering for sale of said stock, in the course of said commerce, the respondent has practiced certain unfair methods of competition hereinafter set forth in paragraphs 7 to 9, inclusive.

PAR. 7. That during the period of two years last past and for the purposes of selling said stock and obtaining subscriptions therefor, and with the effect of deceiving and misleading the public, including those who might and did subscribe for said stock, the respondent, at divers times, has made, published, advertised, and circulated false, misleading, unfair, and extravagant statements, reports, promises, and predictions concerning the business, progress, capital stock, financial standing, and prospective profits of respondent, and has suppressed and concealed from the public material facts relating to and effecting the plans, organization, business, and capital stock of said company; and respondent continues so to do.

PAR. 8. That during said period, and with like purposes and effect, the respondent at divers times has made, advertised, published, and circulated false, unfair, and misleading statements, predictions, and promises concerning the existence, character, value, durability, strength, efficiency, and operation of the aforesaid drilling device or apparatus; and respondent continues so to do.

PAR. 9. That during said period and with like purpose and effect the respondent at divers times has falsely stated, represented, advertised, and published that it was engaged in business as a drilling contractor and continues so to do; whereas the only business transacted by the respondent since the date of its incorporation, namely, June 22, 1917, has been the sale of its capital stock to the public and the soliciting of subscriptions therefor.

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 respondent, Non-Derrick Drilling Machine Company, Inc., charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, Non-Derrick Drilling Machine Company, Inc., having filed its answer, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before Edward M. Averill, a trial examiner of the Federal Trade Commission theretofore duly appointed, at which hearings the respondent appeared and was represented by counsel.

And thereupon this cause came on for final hearing upon the complaint and the answer thereto, the report of the trial examiner, and was argued by counsel, 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 conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The Non-Derrick Drilling Machine Company, Inc., the respondent, is a corporation, incorporated June 22, 1917, under the laws of the State of Delaware, with its statutory office in Dover, in the State of Delaware, and its principal office in Pittsburgh, in the State of Pennsylvania. Authorized capital stock of $200,000 is divided into 200,000 shares of a par value of $1 each, and since the 22d day of June, 1917, the stock of respondent has been offered for sale, and sold and transported in interstate commerce in competition with the stocks and investment securities of other corporations.

PAR. 2. Of this authorized capital stock 173,200 shares have been issued, 153,115 shares being issued to W. A. McCausland for the purchasing of the rights to certain patents covering parts of the drilling machine which the company was organized to build, W. A. McCausland being at the time of organization the inventor of the machine and owner of the said patents.

PAR. 3. The respondent company was organized for the purpose of manufacturing a certain type of nonderrick drilling machine for use in drilling holes for oil, gas, salt, and water, and it was the further intention of the company to operate said nonderrick drilling machine as contractors in drilling holes for oil, gas, or water. History of the inception and organization of the company is as follows:

W. A. McCausland had been for 15 or 20 years prior to 1917 engaged in the drilling business, and during that period the recognized and standard machinery for drilling consisted of a high derrick ranging from 60 to 80 feet, which required for its construction a large amount of timber, and by reason of its height, was unstable. A long stem was required for the drilling operation, and by reason of these and other technical features, the cost of construction was great and the cost of operation heavy. McCausland became interested in the study of ways and means of decreasing these costs and increasing the efficiency, and after devoting a considerable part of his time and some money, he devised a means whereby the derrick could be dispensed with, the drilling being done from a height of approximately 30 feet by use of a cable device running longitudinally of a walking beam operating the loaded tool, and a new style jar working with a piston. He devised several other improvements, all of which new features he patented, application being made January, 1915, and May, 1916, and letters patent granted January 2, 1917. McCausland had no money with which to develop these inventions, and in order to obtain the necessary funds decided to organize a stock company for the development, manufacture, and sale of the new style nonderrick drilling machines. Shortly after the organization of the respondent company, W. A. McCausland was elected president and J. B. Chalmers secretary and treasurer. McCausland then endeavored to secure subscriptions to the stock of the company in order to raise money with which to get the device upon the market. His efforts to interest men of means met with no success, and late in 1917, or early in 1918, the company decided to appeal to the public generally, issuing and circulating various pamphlets (Coms. Exs. 5, 6, 7).[1] These pamphlets were distributed by hand and also by use of the mails, being sent from Pittsburgh, Pa., into Ohio, Kentucky, Illinois, Indiana, Missouri, and New York. The company also advertised in the St. Louis Dispatch, a newspaper published in St. Louis, Mo., and a Buffalo, N. Y., paper (Coms. Ex. 1).[1] The company also issued and mailed to prospects in various States other than Pennsylvania, circular letters (Coms. Exs. 9, 10, 11, 13, 14, 15).[1]

PAR. 4. $35,075 were collected in cash from the sale of stock. Of this amount $6,256.45 was expended upon the construction and erection of one machine and in making the parts for another, the balance being expended in salaries, office expenses, advertising, and other expenses.

PAR. 5. Approximately two years were consumed in building the first and only machine ever put out by the company. This delay is attributed to want of capital and to difficulty in getting work done, owing to the demands of the period 1917 to 1919 on every

[1] Not published.

class of labor and material entering into machine work. The $35,075 which was collected from sale of stock did not come in all at once. It was collected in small sums extending over the entire period of two years.

PAR. 6. The nonderrick drilling machine was first set up at Tionesta, Pa., in the fall of 1919. It developed certain defects and accomplished nothing there. In August, 1920, the machine was taken to Corry, Pa., under a contract between respondent and the Beech Oil Company of Pittsburgh, to drill a well at $2.35 per foot. Actual drilling operations at Corry did not begin until October, 1920, the intervening time being spent in remedying the defects which developed at Tionesta, and in assembling and erecting the machine. From the time actual drilling operations were begun at Corry, in October, 1920, until February 16, 1921, a period of four months, the machine had only drilled to a depth of 170 to 180 feet. During this period constant changes and alterations were being made in the machine, as drilling operations showed the defects; other delays were occasioned by the breaking of parts of the machine. Some of the delay was caused by difficulty in getting coal, labor, and supplies. The machine is not a complete practical drilling machine, and is still in the experimental stage, as shown by the two attempts made to drill with it at Tionesta and Corry. It is necessary in the country around Corry to drill to a depth of at least 700 feet to reach the oil sand. A standard drilling machine will drill a hole 700 feet deep in a period of a week or two weeks.

PAR. 7. The respondent company in the course of its advertising campaign to secure subscriptions to its stock, printed, or caused to be printed, and circulated in interstate commerce in and among the various States of the United States certain circulars and pamphlets in which said circulars and pamphlets the respondent made statements that:

The non-derrick drilling machine requires about 15 tons less material, is constructed for much less money and will greatly increase the capacity over the old style rig. (Coms. Ex. 5.)[1]

The profits in our machine will be enormous. (Coms. Ex. 5.)[1]

But it is not often that you are offered big profits combined with such a large element of safety as that offered by the Non-Derrick Drilling Machine Company. (Coms. Ex. 6.)[1]

We are Drilling Contractors and not oil speculators. (Coms. Ex. 6.)[1]

Every single piece and part of this drilling machine has been designed and tested as to strength and possible desirability and can be demonstrated to do the work effectively and cheaply. (Coms. Ex. 5.)[1]

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[1] Not published.

These statements are false and misleading. At the time these circulars and pamphlets were circulated by respondent company no machine had been built nor had any contracts been made for the building of a machine. It was, therefore, obviously impossible for respondent company to state how much it would cost to build a machine or how much the profits would be. The cost of building the only machine ever constructed greatly exceeded the estimates made by the president of the company, and there have been no profits of any kind made by respondent company. The capacity of the respondent company's machine was not equal to the capacity of a standard drilling machine and would not drill as deep or as fast as the old style rig. The operations of respondent company were all an experiment, and there was no "element of safety" connected with it. Respondent company's advertising literature made no mention of the fact that no machines had been constructed, but gave the impression to purchasers and prospective purchasers that the nonderrick machine was a success.

Respondent company at the time of circulating the pamphlets and circulars quoted above were not drilling contractors and had no contracts for drilling wells, nor did it ever have more than one such contract. The first operation in which the machine was tried and found defective, at Tionesta, Pa., was not under a contract to drill, but was a speculative operation undertaken by respondent, which was abandoned because respondent could not get a lease on the land. No drilling machine had been built when the statements quoted above were made and circulated, and the statement that the various parts of the machine had been tested for strength and durability were false. Until the machine was finally erected and put into operation, no tests of the strength of its various constituent parts had been made. Certain parts of the machine were standard parts used on the standard drilling machine, and the strength of those parts as used on the latter machine was known. In a circular letter, dated January 16, 1919, and distributed through the mails, the following statements were made:

Your inquiry to our "AD" received, for which please accept thanks. We have decided to offer you an opportunity which is both exceptional and unusual. By paying $2.00 per week, you can become an owner in this company and see your $100 grow into thousands.

* * * * * * *

The reason we have changed our plan is simply because we believe we can raise the money quicker with which to start actual business. We believe a person can part with $2.00 per week (without asking any questions) after reading our literature much easier and without feeling it than he could to lay out $100 or more in cash. We could have this company financed and going now, if we would submit to the big fellows and hand them the control, which we have refused to do. We are raising a small amount so the number of people who become owners in this company will be limited. We do not want over 200 subscribers, besides the present stock holders who paid cash, and if the public does not avail theirselves of this opportunity at once, we intend going back to the first system where we started, just a few months ago. This is a new company and just started, now is the time to get in on the ground floor. * * *. A person who would not invest in a sure winner like this would not buy gold dollars for 50 cents. (Coms. Ex. 8.)[1]

These statements are false and misleading. The respondent, during 18 months, had exhausted every means to interest persons with capital in the venture. They could not finance the scheme. They had done little, if anything, toward building even one machine. They did not limit the amount of subscriptions or the number of subscribers. They had no "first system" to which they could "go back."

In a circular letter distributed to prospective customers styled Financial Exhibit or Manufacturing Department (Coms. Ex. 13),[1] the respondent estimates the cost of 500 machines at $412,500, or $825 each, and at the bottom of the so-called Financial Exhibit, states:

YEARLY RETURNS.—It is estimated that the yearly returns on each $100 invested in the shares of the Non-Derrick Drilling Machine Company will yield $250 and that the original investment will have been returned the very first year of actual operation and that the shares will be worth many times their original cost.

While in truth and in fact it cost the respondent company more than $3,200 for one machine; which would make 500 machines cost $1,600,000, wiping out entirely the $500,000 estimated dividends on the stock. These facts were known, or should have been known to the respondent, and the statements made in the said alleged financial exhibit were untrue, grossly exaggerated, and misleading, and calculated to deceive the public.

On November 5, 1920, in answer to an inquiry from a stockholder, the respondent company wrote a letter containing the following:

* * * The machine is a great success and the public will hear from us later. * * *

This statement was false, for in the fall of 1919 respondent had set up its only machine at Tionesta, Pa., where it had not proved a success, and at the time the letter was written the machine was being operated at Corry, Pa., and was not proving practicable.

[1] Not published.

No stock was sold after August 1, 1919, although a few shares were issued after that date to purchasers who were paying for their shares on the deferred-payment plan. As of February 16, 1921, a total of $35,075 cash had been received for stock, of which $29,177.76 was expended, the principal amount being applied to salaries and commissions account and drilling machine and tool account, the remainder being used for miscellaneous items. A balance of $5,897.24 remained in the treasury of the company at that time.

CONCLUSION.

That the practices of the respondent as described in the foregoing findings as to the facts are unfair methods of competition in interstate commerce, and are a 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 proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, the trial examiner's report upon the facts, and the Commission having made its findings as to the facts and its conclusion that the respondent has 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,"

Now, therefore, it is ordered, That the respondent, Non-Derrick Drilling Machine Company, Inc., its officers, directors, agents, and servants, cease and desist from publishing, circulating, or distributing, or causing to be published, circulated, or distributed, in or among the various States of the United States, pamphlets, circulars, post cards, letters, or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities, wherein it is printed or set forth any false or misleading statement, representations, promises, or reports concerning the business, progress, capital stock, organization, resources, financial standing, and prospects of the respondent company.

And it is further ordered, That the respondent shall file with the Federal Trade Commission, within sixty (60) days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, pamphlets, post cards, or other advertising matter distributed or displayed to the public by respondent in connection with the sale of its stock in interstate commerce subsequent to the date of this order.

Complaint.

FEDERAL TRADE COMMISSION
v.
BIG DIAMOND OIL & REFINING CO. ET AL.

CLAIMANT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 795—March 16, 1923.

SYLLABUS.

Where a corporation, and certain officers thereof responsible for its organization and management, in promoting the sale of stock,

(*a*) Misrepresented, in personal solicitation and in newspapers, prospectuses, circulars, and other advertisements, the character of its leases and other holdings, in respect of their alleged location near other well-known, producing properties;

(*b*) Claimed for the enterprise and its stock the approval and sanction of the war-time Capital Issues Committee; the fact being that the application for such approval contained various false statements and misrepresentations and that such approval was granted upon the promise of the corporation to devote the proceeds of the stock authorized to be sold to the completion of its refinery (which promise was not fulfilled), and upon the express understanding that it did not go to the legality, validity, value, or security of the stock;

(*c*) Represented that some of the stock offered was a part of that authorized by the Capital Issues Committee, when, as a matter of fact, it was personal stock of the aforesaid officers;

(*d*) Misrepresented the value of and production from its holdings and the alleged dividends received therefrom;

(*e*) Falsely claimed that the enterprise was a going concern, on a sound, dividend-paying basis; when in fact it at no time earned any net profits and its affairs were mismanaged by the aforesaid officers (who diverted to their own use proceeds belonging to the company) in collusion with one another, and in their personal interest as opposed to that of bona fide stockholders; and

(*f*) For the purpose of stimulating the sale of stock declared a pretended dividend on outstanding stock and made payments thereon with funds derived from the sale of stock, when as a matter of fact the corporation was heavily indebted and at no time had sufficient net profits, surplus, or other funds from which to pay a genuine dividend;

With the result that the purchasing public was misled and deceived, and numerous persons were thereby induced to purchase said stock:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Big Diamond Oil & Refining Company, P. M. Faver, J. F. Dofflemyer, B. F. King, and

O. E. Houston, hereinafter referred to as respondents, have been and are using unfair methods of competition, 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," and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, Big Diamond Oil & Refining Company, is a corporation organized on July 13, 1917, under the laws of the State of Arizona, with principal office at Oklahoma City, Okla., having authorized capital stock of $3,000,000, divided into 3,000,000 shares of the par value of $1 each, which corporation was promoted by the respondents, B. F. King, J. F. Dofflemyer, O. E. Houston, and P. M. Faver; that the purposes for which said corporation was organized were, among others stated, to drill oil wells and build and operate oil refineries.

PAR. 2. That the respondents, B. F. King, J. F. Dofflemyer, O. E. Houston, and P. M. Faver, were designated in the articles of incorporation of the respondent, Big Diamond Oil & Refining Company, as members of its board of directors, and at the first meeting of said board, said respondents, B. F. King, J. F. Dofflemyer, O. E. Houston, and P. M. Faver, were elected president, first vice president, treasurer, and secretary, respectively, of said respondent, and thereafter the respondent P. M. Faver was elected president and the respondent B. F. King was elected vice president of said respondent Big Diamond Oil & Refining Company.

PAR. 3. That immediately after its organization the respondent, Big Diamond Oil & Refining Company, issued to each of the respondents, B. F. King, J. F. Dofflemyer, O. E. Houston, and P. M. Faver, 150,000 shares of its capital stock, in consideration of the assignment to said Big Diamond Oil & Refining Company of certain oil and gas leases, and for alleged services rendered in the promotion of said corporation, all of which leases and the alleged services rendered were of no value, and such transactions were a fraud on stockholders who thereafter bought the stock of such corporation for cash; that of the stock so issued to the respondents, King, Dofflemyer, Houston, and Faver, one-third was assigned back to the corporation to be sold to the public and the proceeds used as working capital and for building a refinery, and although such stock was assigned to the corporation for the purposes stated, it was sold to the public as the personal stock of said respondents, King, Dofflemyer, Houston, and Faver, to enable them to avoid the blue sky laws of several States in the sale of such stock; that such stock was sold on mail orders and by agents on commission to numerous purchasers in the various States of the United States, and respondents caused certificates of such stock, when sold, to be transported to the purchasers thereof, from the State of Oklahoma through and into other States of the United States, and in the sale of such stock respondents were in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 4. That in the sale of stock, as set out in paragraph 3 hereof, respondents made use of advertisements in newspapers of general circulation throughout the United States, and in prospectuses, circulars, circular letters, and other advertising matter, which advertisements and advertising matter contained numerous false and deceptive statements of and concerning the respondent, Big Diamond Oil & Refining Company, the value of oil leases alleged to be owned by it, the value of its stock, and its dividend earning capacity; said respondents caused such advertising matter to be transported from the State of Oklahoma through and into other States of the United States, to prospective purchasers and to agents of respondents; which said false and deceptive statements contained in such advertising matter were calculated to and did mislead and deceive the public, and numerous persons were thereby induced to purchase said stock; that among such false and deceptive statements were statements to the effect that development was going on all around the lands leased by the company in Caddo County, Okla., whereas all of such lands were in unproven and undeveloped territory; that the company owned oil leases on 2,942 acres of land in proven territory, whereas the only lease which the company claimed to own in proven territory was a lease on 6¾ acres near Humble, Tex., but which lease had never been assigned to the company but was held by the respondents Faver and Dofflemyer; the further statement was made that the company owned an oil well which produced 25 barrels of oil per day, whereas such well produced from 4 to 7 barrels of oil per day; also that such stock had been approved by the Federal Capital Issues Committee, whereas such committee had only authorized the sale of 23,000 shares of said stock, as not incompatible with the national interest, but without approval as to the validity or worth of the stock; that numerous other statements of like false and deceptive character were contained in such advertisements and advertising matter.

PAR. 5. That as a means of enhancing the sale of stock in the respondent, Big Diamond Oil & Refining Company, respondent on

May 31, 1918, caused a dividend of 2½ per cent to be declared on all stock which had been sold prior thereto for cash; that at the time such dividend was declared said respondent had earned no profits and possessed no surplus fund from which a dividend could be paid, but such respondent was insolvent; that by the declaration of such dividend the public, and particularly the stockholders of such respondent, were deceived, and numerous persons were thereby induced to purchase stock in said respondent.

PAR. 6. That the business and affairs of the respondent, Big Diamond Oil & Refining Company, have at all times been conducted by its promoters and officers in the interest and for the benefit of such promoters and officers, and particularly the respondents, B. F. King, J. F. Dofflemyer, O. E. Houston, and P. M. Faver, who have contributed nothing of value to the assets of said company, and the business and affairs of said company have at all times been conducted to the disadvantage of those minority stockholders who paid cash for stock in said company and thereby provided it with all the working capital it ever possessed.

PAR. 7. That by reason of the facts recited, the respondents are using an unfair method 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.

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, Big Diamond Oil & Refining Company, P. M. Faver, J. F. Dofflemyer, B. F. King, and O. E. Houston, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents B. F. King and O. E. Houston having filed their answers and entered their appearances by their attorneys, Messrs. Stuart, Sharp & Cruce, and Oscar E. Houston, respectively, and respondents P. M. Faver and J. F. Dofflemyer having demurred to the complaint and, without waiving any rights thereunder, entered their appearances and filed their answers by their attorney, P. M. Faver, and appearance having been entered and answer filed by J. W. McKenney, receiver for Big Diamond Oil & Refining Company, by Messrs. Bridges & Vertrees and E. B. Anderson, his attorneys, hearings were had before an examiner of the Commission theretofore duly appointed, and testimony and evidence introduced in support of the allegations of the complaint, and also by the respondents in support of their defense, and the testimony so taken was reduced to writing and filed, together with the other evidence, in the office of the Commission.

And thereupon this proceeding came on regularly for final hearing, and the Commission having heard argument of counsel and having duly considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Big Diamond Oil & Refining Company, is a corporation organized on July 13, 1917, under the laws of the State of Arizona, with its principal office at Oklahoma City, Okla., having an authorized capital stock of $3,000,000 divided into 3,000,000 shares of the par value of $1 each, which corporation was promoted by the respondents, B. F. King, J. F. Dofllemyer, O. E. Houston, and P. M. Faver; that the purposes for which said corporation was organized were, among others stated, to drill oil wells and build and operate oil refineries.

PAR. 2. Respondents B. F. King, J. F. Dofllemyer, O. E. Houston, and P. M. Faver were designated in the articles of incorporation of the respondent, Big Diamond Oil & Refining Company, and served as members of its board of directors, and at the first meeting of said board respondents B. F. King, J. F. Dofllemyer, O. E. Houston, and P. M. Faver were elected president, first vice president, treasurer, and secretary, respectively, and shortly thereafter respondent B. F. King was elected vice president of said company, and thereupon respondent P. M. Faver was elected president and served as such at all times thereafter.

PAR. 3. Immediately after the organization of respondent company, respondents B. F. King, J. F. Dofllemyer, O. E. Houston, and P. M. Faver caused, in accordance with an agreement among themselves, respondent company to transfer to, and hold for, their personal accounts 100,000 shares each of the company's stock, and to set apart 250,000 shares of the company's stock to be sold to the public for the purpose of obtaining working capital and building a refinery, which transfers of stock were to be made for, and in consideration of, the alleged assignment to said Big Diamond Oil & Refining Company of certain oil and gas leases and alleged services rendered in the promotion of respondent company. Thereafter and prior to the issuance of the complaint herein, the shares of the capital stock of respondent company were sold by respondents and by their agents on mail orders and by direct, personal solicitation of respondent persons and respondents' agents to numerous purchasers in the various States of the United States, and respondents caused the certificates of said stock, when so sold, to be issued and transported to the purchasers thereof from the State of Oklahoma through and into other States of the United States; and in the sale of said stock respondents were in direct, active competition with many other persons, partnerships, and corporations simliarly engaged.

PAR. 4. In the sale of stock as set out in paragraph 3 hereof and as inducements to prospective purchasers to purchase said stock, numerous false, misleading, and deceptive statements and other representations were made by respondents and their agents in collusion with each other, and they also made use of advertisements in newspapers of general circulation throughout the United States and prospectuses, circulars, letters, and telegrams (all of which are hereinafter referred to as "advertising matter"), which advertising matter also contained numerous false, misleading, and deceptive statements and other representations; and respondents caused such advertising matter to be transported from the State of Oklahoma through and into other States of the United States to their said agents and to prospective purchasers of said stock for the purpose of inducing prospective purchasers to purchase said stock. Said false, misleading, and deceptive statements and other representations made by respondents and their agents and those contained in said advertising matter were to the following effect:

(1) That oil developments was going on all around lands leased by respondent company in Caddo County, Okla., and that said lands were in proven oil territory, whereas in truth the said lands claimed to be so leased by respondent company in said county were in unproven and undeveloped territory, the nearest production to same being from 2 to 4 miles away.

(2) That respondent company owned oil leases on 2,942 acres of land in proven oil territory, whereas in fact not more than 77 acres of said lands may be truthfully so classed.

(3) That the company owned in fee simple six and two-thirds ($6\frac{2}{3}$) acres in the heart of the well-known Humble oil fields of Texas, on which property the company owns and is operating a well having a settled production of 25 barrels of oil per day, and that said well is producing for respondent company a net income of over $11,000 per year, which production is paying a substantial dividend on the company's investment, whereas in truth respondent company never owned or held the title to said $6\frac{2}{3}$-acre property, and it received the oil runs from said well only for a period of about 11 months, from May, 1918, to March, 1919, and said company's claim to such oil runs was based upon an agreement by it to pay a certain indebtedness on the property, which indebtedness respondent company never paid, and said company is not now in

possession of, or receiving any production from, said property, and said well, when producing, had a capacity of only 4 to 11 barrels per day, and respondent company's gross income from said property and well was less than $3,000 and was at no time sufficient to pay a dividend on the company's investment, and said property was at no time a source of profit to said respondent company.

(4) That respondent company owned a lease on 5 acres of land situated in the "world-famed Goose Creek oil fields of Texas, practically surrounded by gushers producing from 5,000 to 35,000 barrels daily," and that said 5-acre lease has a cash value of $300,000, whereas in truth said 5-acre tract is outside of the said Goose Creek oil fields of Texas, and the nearest oil production in any direction was more than three-fourths of a mile south thereof, and the said lease did not have a cash value of $300,000, but was of little or no value, and said property has been abandoned by respondent company as nonproductive.

(5) That respondent company and its stock had the approval of the Capital Issues Committee and the United States Government, and that the sale of such stock had been authorized by said committee, whereas in truth said Capital Issues Committee only rendered a decision that the sale of 23,000 shares of the respondent company's stock would not be incompatible with the national interest at that time, which decision of said Capital Issues Committee was based upon an application made by respondent company with respect to the issuance of securities under Title II of the War Finance Corporation Act, and also upon respondent company's promise that $20,000 of the proceeds of said shares to be sold would be used to complete respondent company's refinery, and neither the said Capital Issues Committee nor the United States Government approved respondent company or its stock in any way, and said committee's decision was made with the stipulation and understanding that it in no manner approved the legality, validity, worth, or security of said stock, and the said application made by respondent company to said committee contained false statements of fact as to the capitalization of respondent company and the number of shares issued and other misleading representations, and the funds received from the sale of stock, passed upon as aforesaid by said committee, were never used, as promised, to complete respondent company's refinery.

(6) That some of the shares of said stock offered for sale and sold by respondents were part and parcel of said 23,000 shares passed upon by the Capital Issues Committee, as aforesaid, whereas in truth said shares so offered and sold were considered and handled by respondents as the personal stock of respondent individuals.

(7) That respondent company was on a sound dividend-paying basis and a going concern earning substantial profits, whereas in truth respondent company was at no time on a dividend-paying basis or in sound financial condition and at no time earned any net profits, and respondents, colluding with each other therein, mismanaged and controlled the business of respondent company and its finances to their own personal interests as against the interests of the bona fide stockholders who purchased their stock from respondents;

and respondent persons, in said collusion, diverted to their own use proceeds belonging to the company and derived from the sale of stock to the public.

The aforesaid false, misleading, and deceptive statements and other representations made by respondents and their agents, and those contained in said advertising matter, as hereinbefore set out, were calculated, have and had the capacity and tendency to, and did, mislead and deceive the purchasing public, and numerous persons were thereby induced to purchase said stock of respondent company.

PAR. 5. As a means of enhancing the sale of stock, respondents declared a so-called dividend of 2½ per cent, to be paid on July 1, 1918, on all stock outstanding and paid up on May 31, 1918, whereas respondent company was at that time heavily indebted, and it at no time had sufficient net profits, surplus, or other funds from which to pay any genuine dividend, but stock and funds derived from the sale of stock were used to pay part of said so-called dividend, and, owing to lack of sufficient funds, some stockholders were never paid. By the declaration of said so-called dividend the purchasing public, and particularly the stockholders of respondent company, were misled and deceived, and numerous persons were thereby induced to purchase stock of said respondent company.

PAR. 6. That on the 29th day of May, 1920, the respondent, Big Diamond Oil & Refining Company, was placed in the hands of a receiver by the District Court of Jefferson County, Okla., in a certain action wherein R. M. Golden et al. were plaintiffs and respondent company was defendant.

CONCLUSION.

The practices of the respondents, under the circumstances and conditions described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce, and constitute a 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 the respondents, the testimony and evidence, and argument of counsel, 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 respondent, Big Diamond Oil & Refining Company, its officers, agents and employees, and respondents, P. M. Faver, G. F. Dofflemyer, B. F. King, and O. E. Houston, their agents and employees, do cease and desist from directly or indirectly making, or causing to be made, in selling in commerce or in promoting or furthering in commerce the sale of stock or other securities of the Big Diamond Oil & Refining Company or any other corporation, trust, or association, any statement or representation in any way whatsoever to the effect:

(1) That oil development is going on all around lands owned or leased by any such corporation, trust, or association.

(2) That any lands owned, leased, or claimed by any such corporation, trust, or association are in proven oil territory.

(3) That any such corporation, trust, or association owns in fee simple, or has leases on, any producing oil property;

(4) That any such corporation, trust, or association is on a dividend-paying basis or is earning substantial profits;

(5) That any such corporation, trust, or association has oil wells producing specific quantities of petroleum daily; or that any such corporation, trust, or association has any specific income;

(6) That any such corporation, trust, or association owns lands or leases on lands, in or near any well-known producing oil fields;

(7) That the legality, validity, worth, or security of any such stock or other securities, or that any such corporation, trust, or association, has been approved, passed upon or sanctioned in any way by the United States Government or any agency thereof;

(8) That any such stock or other securities is treasury or company stock or other securities of any such corporation;

(9) That any such corporation, trust, or association is about to pay or has paid any genuine dividends;

(10) That any such corporation, trust, or association is properly managed in the best interests of all its stockholders;

When such statement or representation is not true in fact.

It is further ordered, That respondents, within sixty (60) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

LONE STAR OIL CO. ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 796—March 23, 1923.

SYLLABUS.

Where a corporation and individuals interested therein, in promoting the sale of stock of said corporation; through newspapers, prospectuses and other advertising matter, and otherwise.

(*a*) Represented that the personally owned stock so offered was treasury stock being sold to supply the company with money for extra drilling operations, in order to increase its earnings and further to develop its properties; the fact being that the company received none of the proceeds thereof;

(*b*) Claimed that most of its holdings were located in the heart of a famous oil field and that the rest were located within its productive area; the fact being that, with the exception of a very small proportion, said holdings were largely in "wildcat" territory;

(*c*) Grossly misrepresented the amount of its earnings and income, the dividend rate warranted thereby, and its prospects in general; the fact being that at no time were its net profits (if it had any), sufficient to warrant any such dividend rate as alleged;

With the result that the purchasing public was misled and deceived and numerous persons were thereby induced to purchase said stock:

Held, That such practices, substantially as described, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that Lone Star Oil Company, Joe L. Stetman, Mrs. M. S. Lawson, C. H. Langdon, C. A. Bradley, J. D. Hawk, George F. Barton, J. B. Braidwood, and George B. Kemp, hereinafter referred to as the respondents, have been and are using unfair methods of competition, 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent Lone Star Oil Company is a corporation organized under the laws of the State of Colorado, with principal place of business at Denver in said State, having authorized capital stock of $300,000 divided into 30,000,000 shares of the par value of one cent ($0.01) each; the respondents Joe L. Stetman, Mrs. M. S. Lawson, C. H. Langdon, C. A. Bradley, and J. D. Hawk were the promoters of said respondent Lone Star Oil Company and participated in the conduct and management of its affairs; that the respondent George F. Barton, operating under the name and style of Barton Brokerage Company, J. B. Braidwood, operating as Braidwood Brokerage Company, and George B. Kemp were actively engaged as brokers in the sale of the stock of the respondent Lone Star Oil Company, as hereinafter set out.

PAR. 2. That the respondent Lone Star Oil Company was organized in October, 1917, to take over all the outstanding capital stock of the Holly Oil Company, a corporation, all the stock of which was then held by the respondent C. A. Bradley; that the said Holly Oil Company then owned an oil lease on 10 acres of land in the Humble, Tex., field, upon which tract there were six oil wells which were then producing approximately 135 barrels of oil per day; that upon the organization of the respondent Lone Star Oil Company there was issued to the respondent C. A. Bradley 26,666,667 shares of its stock in consideration of the assignment by the respondent C. A. Bradley of all the outstanding capital stock of said Holly Oil Company, to the respondent Lone Star Oil Company; thereupon the respondents C. A. Bradley and Joe L. Stetman, who was the president of the respondent Lone Star Oil Company, entered into a partnership for the sale of the stock issued to the respondent C. A. Bradley as aforesaid, upon a commission of 40 per cent of the proceeds of the sale of such stock; that before any of such stock was sold the respondent C. A. Bradley withdrew from such partnership with the respondent Joe L. Stetman, whereupon the respondent J. D. Hawk became a member of such partnership, and after 1,500,000 shares of such stock had been sold by such partnership the respondent Joe L. Stetman sold his interest in such partnership and its business to the respondent Mrs. M. S. Lawson, who thereupon organized the Lawson Securities Company, which company was designated as sales agent for the sale of the stock issued to the respondent C. A. Bradley as aforesaid, portions of which stock were then sold through brokers among whom were the respondent George F. Barton, operating as Barton Brokerage Company, the respondent J. B. Braidwood, operating as the Braidwood Brokerage Company, and the respondent George B. Kemp; that respondents sold numercus shares of such stock to various persons outside the State of Colorado and caused certificates of such stock when sold to be transported to the purchasers thereof from the State of Colorado through and into other States of the United States and carried on the business of selling such stock in direct, active competition with other persons and corporations similarly engaged.

PAR. 3. That respondents and each of them in the course of the sale of the stock of the respondent Lone Star Oil Company, as described in paragraph 2 hereof, caused advertisements to be published in newspapers of general circulation throughout the United States and made use of circulars, circular letters, and other advertising matter which they gave general circulation throughout the United States, which advertisements and advertising matter contained numerous false and deceptive statements concerning the respondent Lone Star Oil Company, its properties, the extent of its operations, and the value of its stock; the further false and deceptive statement was made that the stock which respondents were selling, as aforesaid, was treasury stock of the respondent Lone Star Oil Company and that the proceeds of the sale of same would be used for drilling oil wells for the respondent Lone Star Oil Company and for general development purposes for said company, whereas such stock was the property of the respondent C. A. Bradley and no part of the proceeds of the sale of same was turned in to the treasury of the respondent Lone Star Oil Company; that such statements were calculated to and did mislead and deceive the public and numerous persons were induced thereby to purchase said stock.

PAR. 4. That the use by each and all of said respondents severally and in their common interest, of the practices hereinbefore set out is an unfair method of competition in commerce within the 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.

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 a complaint against Lone Star Oil Company, Joe L. Stetman, Mrs. M. S. Lawson, C. H. Langdon, C. A. Bradley, J. D. Hawk, George F. Barton, J. B. Braidwood, and George B. Kemp, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act and served said complaint upon Lone Star Oil Company, Joe L. Stetman, C. A. Bradley, J. D. Hawk, George F. Barton, and J. B. Braidwood. Service of said complaint was not effected upon respondents Mrs. M. S. Lawson and George B. Kemp, as they could not be found. Respondent C. H. Langdon received due and timely notice of issuance of said complaint and the proceedings had herein.

Respondents Lone Star Oil Company, C. H. Langdon, Joe L. Stetman, George F. Barton, and J. D. Hawk entered their appearances, respondents Mrs. M. S. Lawson and George B. Kemp appearing neither in person nor by attorney, and respondent J. B. Braidwood having deceased, hearings were had before examiners of the Federal Trade Commission theretofore duly appointed and testimony and evidence taken on behalf of the Commission; and respondents having been given full opportunity to cross-examine the witnesses offered on behalf of the Commission and to introduce evidence in their defense the hearings before the examiners were duly closed, and the testimony so taken being reduced to writing was filed in the office of the Federal Trade Commission.

And thereupon this proceeding came on for final hearing before the Federal Trade Commission, and the Commission having heard argument of counsel and 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:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent Lone Star Oil Company is a corporation organized under the laws of the State of Colorado, with its principal place of business at Denver, in said State, having an authorized capital stock of $300,000, divided into 30,000,000 shares of the par value of one cent each. The respondents Joe L. Stetman, Mrs. M. S. Lawson, C. H. Langdon, C. A. Bradley, and J. D. Hawk were the promoters of respondent Lone Star Oil Company and, with the exception of C. A. Bradley, participated in the conduct and management of its affairs and the sale of stock of respondent company as hereinafter set out. Respondent George F. Barton, operating under the name and style of Barton Brokerage Company, was actively engaged as broker and agent, ostensibly for respondent company, in the sale of stock of respondent Lone Star Oil Company as hereinafter stated.

PAR. 2. That respondent Lone Star Oil Company was organized, as aforesaid, in October, 1917, to take over the outstanding capital stock of the Holly Oil Company, a corporation, all the stock of which was then held by respondent C. A. Bradley. The Holly Oil Company then owned an oil lease on 10 acres of land in the Humble Oil Field of Texas, upon which tract there were a number of oil wells which were then collectively producing approximately 135 barrels of oil per day. That upon the organization of the respondent Lone Star Oil Company, it issued to respondent C. A. Bradley 26,666,667 shares of its stock in consideration of the assignment by the respondent C. A. Bradley of all the outstanding capital stock of the said Holly Oil Company to respondent Lone Star Oil Company. Thereupon respondent C. A. Bradley, Joe L. Stetman, who was then the president of the respondent Lone Star Oil Company, and respondent J. D. Hawk, who was assistant secretary of respondent company, formed a partnership for the sale of the stock issued to respondent C. A. Bradley, as aforesaid, upon a commission of 40 per cent of the proceeds of the sale of such stock. That before any such stock was sold, respondent C. A. Bradley withdrew from such partnership with respondents Joe L. Stetman and J. D. Hawk, whereupon one Morris H. Block became a member of such partnership in the place of respondent Bradley, and after about 1,500,000 shares of such stock had been sold by said partnership, which operated ostensibly as agents of respondent company in said business, respondent Joe L. Stetman sold his interest in said partnership to respondent Mrs. M. S. Lawson, who was the secretary-treasurer of respondent Lone Star Oil Company. The Lawson Securities Company was then organized, and was continuously thereafter managed and controlled by respondent Mrs. M. S. Lawson, respondent J. D. Hawk, said Morris H. Block, and one Mrs. H. I. Barwise, and said Lawson Securities Company, upon its organization, succeeded to and acquired the business of said partnership and became the selling organization for the sale of the stock issued to respondent C. A. Bradley, as aforesaid, and in carrying on such business it styled itself "financial agents" of respondent Lone Star Oil Company. Many shares of said stock were sold from and after the time of organization of respondent company by respondent Lone Star Oil Company, by respondents Stetman and Langdon, each trading individually and as officer, director, and agent of respondent Lone Star Oil Company and under the unincorporated firm name and style of Joe L. Stetman & Company, by respondent J. D. Hawk, trading under the name and style of Lawson Securities Company, and by respondent George F. Barton, trading under the name and style of Barton Brokerage Company, to numerous purchasers throughout the various States, and they, and each of them, caused certificates of such stock when so sold to be transported from the State of Colorado through and into various other States of the United States to the purchasers thereof, and they and each of them carried on the business of selling and distributing such stock to the public in direct, active competition with other persons, partnerships, and corporations similarly engaged.

Par. 3. In the sale of said stock as set out in paragraph 2 hereof, and as inducements for prospective purchasers to purchase said stock, numerous false, misleading, and deceptive statements and other representations were made by respondents Lone Star Oil Company, Stetman, Langdon, Hawk, and Barton, trading as aforesaid, and their agents, and they also made use of advertisements in newspapers of general circulation throughout the United States and prospectuses, circulars, letters, and telegrams (all of which are hereinafter referred to as "advertising matter") which advertising matter also contained numerous false, misleading, and deceptive statements and other representations, and said respondents, trading as aforesaid, caused such advertising matter to be transported from the States of Colorado and Utah, through and into other States of the United States to prospective purchasers of said stock for the purpose of inducing said prospective purchasers to purchase said stock. Said false, misleading, and deceptive statements and other representations made by said respondents Lone Star Oil Company, Stetman, Langdon, Hawk, and Barton, and their agents, and said false, misleading, and deceptive statements and other representations contained in said advertising matter were to the following effect:

(1) That the said stock offered for sale and sold was treasury stock of respondent Lone Star Oil Company and that such stock was being sold to supply said company's treasury with money for extra drilling operations in order to increase its earnings and to further develop its properties, whereas in truth the stock so offered for sale and sold was not treasury stock of respondent company, but stock that had been issued to respondent C. A. Bradley for and in consideration of the stock of said Holly Oil Company as hereinbefore set forth, and respondent Lone Star Oil Company received none of the proceeds from the sale of said stock, but said proceeds to the extent of $100,000 were paid to respondent C. A. Bradley and the balance of said proceeds went to the various persons and companies engaged in selling said stock to the public, all of which facts were well known to said respondents making said representations.

(2) That respondent company's earnings and income from production from its properties were $50,000 per year, which were increased by the drilling of additional wells to approximately $125,000 per year, and, even before the company received an advance of 35 cents a barrel in the selling price of its oil, the production from its properties was netting the company approximately 15 per cent of its entire capitalization of $300,000; whereas in truth the total income from respondent company's production did not exceed the sum of $60,000, all of which income from production was received over a period of more than two years from December 1, 1917, to December 31, 1919, and by far the greater part of said total income was received from the sale of oil produced after the adoption of the practice of making

said representations, and the net profits accruing from said production, if there were any, were very small, and at no time were said net profits sufficient to amount to approximately 15 per cent of respondent company's entire capitalization of $300,000 as represented, and respondent company's expenses in operating its properties from which its said production was obtained were very large in proportion to the income and at times said expenses were as much or more than the income.

(3) That the holdings of respondent company consisted of 110 acres in "the very heart" of the famous Humble Oil Field of Texas, and 43 acres additional within the productive area of said oil field; whereas in truth the only property respondent company owned in said Humble Oil Field was a lease on a little less than 10 acres from which all its production was derived, and its other property consisted of a lease on 100 acres situated 3 miles outside of said Humble Oil Field and not within or near any oil-producing area, but is in what is classed as "wild cat" territory, and said 43-acre tract referred to was located outside of, and at least 1 mile from, any oil-producing area.

(4) That respondent company was on a dividend paying basis with earnings sufficient to maintain the payment of dividends; whereas in truth all the dividends declared by the respondent company were the following:

2 per cent cash dividend payable January 15, 1918.
4 per cent cash dividend payable March 15, 1918.
5 per cent stock dividend on all stock outstanding on June 15, 1918.
3 per cent cash dividend on all stock outstanding on September 15, 1918.

and the par value of the stock distributed as said stock dividend amounted to $13,865.27, and said cash dividends, if paid on the outstanding stock at the respective times, would have exceeded the sum of $24,000, but respondent company claims to have disbursed a total of only $14,793.99 in distributing said cash dividends. However, the profits of respondent company from all sources for the period December 1, 1917, to December 31, 1918, which period covered the period in which the foregoing dividends were declared, amounted to much less than the par value of the stock and the funds so distributed as said dividends, and furthermore the company's final net profits for said period are listed in its profit and loss statement as being less than $1,500.

The foregoing false, misleading, and deceptive statements and other representations made by respondents Lone Star Oil Company, Stetman, Langdon, Hawk, and Barton and their agents, and those false, misleading, and deceptive statements and other representations contained in said advertising matter as hereinbefore set out, were calculated, have and had the capacity and tendency to, and did, mislead and deceive the purchasing public and numerous persons were thereby induced to purchase said stock.

PAR. 4. That respondent, C. A. Bradley, having in mind the sale of the property of the Holly Oil Company at Humble, Tex., made suggestions to and advised some of the other individual respondents in this proceeding as to the organization and promotion of respondent Lone Star Oil Company, and upon its organization he received 26,666,667 of its 30,000,000 shares of capital stock for the capital stock of the Holly Oil Company. These 26,666,667 shares of stock were, in accordance with agreement, to be sold or so much thereof as would net him $100,000, as hereinbefore mentioned, and while he was interested in the sale of said stock, it does not appear from the record in this proceeding that he was at any time an officer of respondent company or that he ever sold or offered for sale any of the stock of respondent company or was responsible for the representations made in the sale of stock as hereinbefore set forth.

PAR. 5. That shortly after the institution of this proceeding against respondents, and before the taking of any testimony herein, respondent, J. B. Braidwood, departed this life.

CONCLUSION.

That the practices of respondents, Lone Star Oil Company, Joe L. Stetman, C. H. Langdon, J. D. Hawk, and George F. Barton, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a 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 pleadings, the testimony and evidence and argument of counsel and the Commission having made its findings as to the facts with its conclusion that respondents, Lone Star Oil Company, Joe L. Stetman, C. H. Langdon, J. D. Hawk, and George F. Barton, 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 respondent Lone Star Oil Company, its officers, agents and employees, and respondents Joe L. Stetman, C. H. Langdon, J. D. Hawk, and George F. Barton, their agents and employees, do cease and desist from directly or indirectly making, or causing to be made by any means whatsoever in selling in commerce, or in promoting and furthering in commerce the sale of stock or other securities of Lone Star Oil Company or of any other corporation, trust, or association, any statement or representation to the effect that (1) said stock or other securities is treasury or company stock or other company securities; or (2) that the proceeds from the sale of said stock or other securities is being received and used by such company, corporation, trust or association for developing its holdings; or (3) that the earnings and income of Lone Star Oil Company or any other such corporation, trust, or association is a stated amount or approximates a stated amount; or (4) that the holdings of Lone Star Oil Company or any other such corporation, trust or association is in the Humble Oil Field of Texas, or in any oil producing area, or in proven oil territory; or (5) that Lone Star Oil Company or any other such corporation, trust, or association is on a dividend paying basis and is earning sufficient profits to maintain the payment of dividends; when any or all said statements or representations are not true in fact.

It is further ordered, That respondents Lone Star Oil Company, Joe L. Stetman, C. H. Langdon, J. D. Hawk, and George F. Barton within sixty (60) days from notice hereof file with the Commission a report in writing, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

AUSTIN-WESTERN ROAD MACHINERY COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 434—March 29, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of road machinery and kindred products.

(a) Employed public officials and other public employees, part of whose duty it was to purchase, or recommend the purchase of, similar products, for or by the governing bodies served by them, as its agents for the sale of its products in political divisions other than those served by them, and paid them commissions on sales thereof in such other subdivisions;

(b) Employed relatives and friends of such public officials and other public employees as its agents for the sale of its products in the political subdivisions served by such public officials and other employees, and paid them commissions as an inducement to persuade and cause such officials and other employees to purchase or contract to purchase its products and to refrain from dealing with its competitors;

With the result that all competitors were affected and the cost of its products was increased, and with a tendency to cause its competitors to do likewise in order to retain their business:

Held, That such employment and such payments, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Austin-Western Road Machinery Company, hereinafter referred to as respondent, is now and for more than a year last past has been using 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Austin-Western Road Machinery Company, a corporation organized and existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in the State of Illinois, is now and for more than one year last past has been engaged in manufacturing and selling road machinery and kindred products throughout the various States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products in interstate commerce.

PAR. 2. That in the course of its business of manufacturing and selling road machinery and kindred products throughout the various States and Territories of the United States, the respondent is now and for more than one year last past has been giving and offering to give to public officials and to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence said public officials and employees of customers to recommend, purchase, or contract to purchase from the respondent, road machinery and kindred products, without other consideration therefor, gratuities such as liquor, cigars, meals, theatre tickets, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling road machinery and kindred products throughout the various States and Territories of the United States, the respondent is now and for more than one year last past has been paying and offering to pay the expenses of public officials and their representatives to the respondent's place of business for the purpose of inspecting the respondent's products, as an inducement to influence said public officials to purchase or contract to purchase from the respondent, road machinery and kindred products.

PAR. 4. That in the course of its business of manufacturing and selling road machinery and kindred products throughout the various States and Territories of the United States, the respondent is now and for more than one year last past has been secretly paying and offering to pay to public officials, their friends and relatives, and to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, sums of money as an inducement to influence said public officials and employees of customers to recommend, purchase, or contract to purchase from the respondent, road machinery and kindred products, or to influence said public officials and customers to refrain from dealing or contracting to deal with competitors of the respondent.

REPORT, MODIFIED 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, the Austin-Western Road Machinery Company, charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its respective attorneys, and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

Paragraph 1. That the respondent, Austin-Western Road Machinery Company, is a corporation, organized and existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in the State of Illinois, and is now and has been for more than one year preceding the commencement of this case engaged in manufacturing and selling road machinery and kindred products throughout the various States and Territories of the United States and at all times has carried on and conducted its said business in competition with other persons, firms, partnerships, and corporations manufacturing and selling similar products in interstate commerce.

Par. 2. That in the course of its business, as described in paragraph 1 hereof, continuously and for more than two years immediately preceding the issuance of the complaint herein, there has been a general practice, on the part of the respondent, the Austin-Western Road Machinery Company, to employ and to pay commissions to public officials and public employees to act as its agents to sell its goods in political subdivisions other than those in which said officials and employees are officially connected.

Par. 3. That also in the course of its said business, continuously and for more than two years immediately preceding the issuance of the complaint herein, there has been on the part of the said respondent, a general practice to employ and pay commissions to, in the political subdivisions in which public officials and public employees had the power to purchase the kind of goods sold by the respondent, relatives and friends of such officials and employees, as its agents to sell its goods therein, as an inducement to persuade and to cause said officials and employees to purchase or to contract to purchase for their principals, goods, wares, and merchandise from the respondent, and to refrain from dealing with or contracting to deal with competitors of the respondent selling the same or similar goods, wares, and merchandise.

PAR. 4. That the said public officials and said public employees, who were so employed or to whom said commissions were paid by the respondent to act as its agents and to sell its goods in political subdivisions other than those with which the said officials and employees are officially connected, or whose relatives and friends were employed by or who received commissions from the respondent, were such public officials and such public employees whose duties in behalf of the public in whose service they were, required them to purchase, or to recommend the purchase of, for their principals, the kind of goods, wares, and merchandise mentioned in paragraph 1 hereof.

PAR. 5. That the practice of so employing and paying commissions to said officials and employees, and of so employing and paying commissions to relatives and friends of said officials and employees, for the purpose aforesaid, affects all of respondent's competitors and tends to cause them to do likewise for the same purpose and with the same effect as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 6. That as a result of the said employment and the said payment of commissions as aforesaid the respondent adds to its cost of doing business the amount of money paid by it as stated in these findings, and the cost of its goods, wares, and merchandise to its customers is its cost of doing business plus its profits.

CONCLUSION.

That the practices of respondent as set forth in the above findings of fact are unfair methods of competition in interstate commerce and 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."

MODIFIED ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon its complaint, the answer of the respondent, the testimony and the evidence and the briefs of counsel, and the Commission having made its findings as to the facts with its conclusion that the 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, therefore, ordered, That the respondent, Austin-Western Road Machinery Company, its agents and servants, cease and desist from employing or offering to employ officials or employees of States or political subdivisions of the States of the United States as its agents for the sale of its commodities in any territory other than that which they officially represent (such employment in the territory in which they are officially connected being already prohibited by law), and

2. From directly or indirectly paying, offering, or promising to pay money or other valuable considerations to the relatives of officials having the purchasing power to induce or influence such officials to purchase the commodities sold by the respondent for the political subdivision represented by them.

It is further ordered, That Austin-Western Road Machinery Company shall, within thirty (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 as hereinbefore set forth.

FEDERAL TRADE COMMISSION
v.
PILLING AND MADELEY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 698—April 5, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of hosiery in competition with concerns who either correctly branded, labeled, and advertised their products with reference to composition or failed to brand, label, and advertise the same at all in that respect; branded, labeled, advertised and sold hosiery composed of silk and cotton in varying proportions as "womens two tone silk hose," "ladies two tone silk hose," and "pure thread silk hose," thereby misleading a substantial part of the purchasing public with reference to the composition of said goods:

Held, That such branding, labeling, advertising and sales, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Pilling and Madeley, hereinafter referred to as the respondent, has been, and now is, using 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect, on information and belief.

PARAGRAPH 1. That the respondent, Pilling and Madeley, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business in the city of Philadelphia, in the said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling hosiery, and in the course of its business causes its products, so manufactured and sold by it, to be transported to the purchasers thereof, from the State of Pennsylvania, through and into other States of the United States, and the District of Columbia; and in the conduct of such business is in direct, active, competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business as described in paragraph 2 hereof, places upon certain lines of hosiery so manufactured, sold, and by it caused to be transported as aforesaid, and upon the boxes in which such hosiery is eventually exhibited for sale to the purchasing public, certain false and misleading brands and labels, viz: "Gordon Silk Hose," "Women's Two Tone Silk Hose," "Ladies' Two Tone Silk Hose," "Pure Thread Silk Hose," whereas in truth and in fact the material of which such hosiery so labeled and branded is made, is not silk, but is a composition of animal and vegetable fiber in varying proportions; that such labels and brands are false and misleading and are calculated to, and do, deceive the purchasing public into the belief that such hosiery is manufactured wholly of silk.

PAR. 4. That by reason of the facts recited, the respondent is using unfair methods of competition in interstate 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."

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, Pilling and Madeley, 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 in its own proper person and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, 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 and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade 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:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Pilling and Madeley, is a corporation duly incorporated and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business in the city of Philadelphia, State of Pennsylvania.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling at wholesale, in the State of Pennsylvania and in other States of the United States, hosiery, and in causing same to be shipped and transported from the State of Pennsylvania through and into other States of the United States pursuant to such sales, in competition with other corporations, copartnerships, and individuals engaged in similar commerce between and among the States of the United States, and that there has been and is continuously a current of trade to and from said respondent, in said hosiery, among and between the States of the United States.

PAR. 3. That the respondent, prior to about July 1, 1920, at about which time the Commission commenced its investigation, in the conduct of its business as described in paragraph 2 above, sold and shipped hosiery which was made of material derived from the cocoon of the silkworm and cotton in varying proportions, which it labeled, advertised, and branded, and in packages or containers which it labeled, advertised, and branded "Women's Two Tone Silk Hose," and "Ladies' Two Tone Silk Hose," and "Pure Thread Silk Hose." That dealers purchasing this hosiery from respondent or from respondent's customers labeled, advertised, and branded as aforesaid, offer and sell it so labeled, advertised, and branded to the general purchasing public. That neither the said hosiery nor the boxes containing it were labeled, advertised, or branded with any other word or words to indicate the character, kind, or grade of material or materials entering into the manufacture of said hosiery.

PAR. 4. That the term, "Two Tone Silk Hose," is understood by the general purchasing public to mean hosiery which is made entirely of material derived from the cocoon of the silkworm which, through dyeing, is given a two-tone color or effect. That the term, "Pure Thread Silk Hose," is understood by the general purchasing public to mean hosiery which is made entirely of material derived from the cocoon of the silkworm.

PAR. 5. That many of respondent's competitors are engaged in the sale of hosiery in States other than those in which their principal factories or places of business are located, and in causing hosiery so sold to be transported from the States in which their principal factories or places of business are located through and into other States of the United States pursuant to such sales. That many such competitors, prior to July 1, 1920, sold and shipped and are now selling and shipping in said commerce between the States, hosiery which is made entirely of material derived from the cocoon of the silkworm, which through dyeing is given a two-tone color or effect, which hosiery and the packages or containers for which are labeled, advertised, and branded " Two Tone Silk Hose." That many such competitors, prior to July 1, 1920, sold and shipped, and are now selling and shipping in said commerce between the States of the United States, hosiery which is made entirely of material derived from the cocoon of the silkworm, which hosiery and the packages or containers for which are labeled, advertised, and branded " Pure Thread Silk Hose."

PAR. 6. That many of respondent's competitors, in the course of commerce between States as described in paragraph 5 above, prior to July 1, 1920, sold and shipped and are now selling and shipping, hosiery which is made of material derived from the cocoon of the silkworm and of cotton in varying proportions, which hosiery and the packages or containers for which are labeled, advertised, and branded with no word or words descriptive of the material or materials entering into the manufacture of such hosiery. That many of respondent's competitors, in the course of commerce between the States as described in paragraph 5 above, prior to July 1, 1920, sold and shipped and are now selling and shipping hosiery which is made of material derived from the cocoon of the silkworm and of cotton in varying proportions, and the labels, advertisements, and brands on which, and on the packages or containers for which contain the words " Silk and Cotton " or the words " Silk and Lisle."

PAR. 7. That many of respondent's competitors, in the course of commerce between the States, as described in paragraph 5 above, prior to July 1, 1920, sold and shipped and are now selling and shipping hosiery which is made of material derived from the cocoon of the silkworm and of cotton in varying proportions, which, through dyeing, is given a two-tone color or effect, which hosiery and the packages or containers for which are labeled, advertised, and branded with no word or words descriptive of the material or materials entering into the manufacture of such hosiery. That many of respondent's competitors, in the course of commerce between the States, as described in paragraph 5 above, prior to July 1, 1920, sold and shipped, and are now selling and shipping, hosiery which is made of material derived from the cocoon of the silkworm and of cotton in varying proportions, which, through dyeing, is given a two-tone color or effect, and the labels, advertisements, and brands on which and on the packages or containers for which contain the words "Silk and Cotton," or the words "Silk and Lisle."

PAR. 8. The labels or brands under which the respondent sells, advertises, and ships hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to the composition of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete unfairly with goods of its competitors in interstate commerce, who, as set forth in paragraphs 6 and 7 above, sell hosiery made entirely of silk, or hosiery made wholly or in part of other materials than those named, labeled, and branded, so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 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 the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, that the 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, Pilling and Madeley, and its officers, agents, representatives, servants, and employees, cease and desist from:

1. Representing by any label, brand, or advertisement that the hosiery sold by it is silk unless such hoisery is entirely composed throughout of silk produced from the cocoon of the silkworm, or

2. Employing the word silk as a part of any label, brand, or advertisement of hoisery which is not entirely composed throughout of silk produced from the cocoon of the silkworm, unless the other material or materials used are aptly and truthfully named and given equal prominence with the word silk; except that the words "silk boot hose" may properly be used to designate hosiery the top, toe, heel and sole of which is made of cotton and the remainder of silk produced from the cocoon of the silkworm.

FEDERAL TRADE COMMISSION

v.

BROWN DURRELL COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 678—April 11, 1923.

SYLLABUS.

Where a corporation engaged in the sale at wholesale of hosiery in competition with concerns who either correctly branded, labeled, and advertised their products with reference to composition or failed to brand, label, and advertise the same at all in that respect sold hosiery composed of cotton and wool in packages or containers branded and labeled "cashmere," "fine wool," "all wool," and "natural wool," thereby misleading a substantial part of the purchasing public into believing said goods to be composed of wool:

Held, That the sale of goods branded or labeled as above set forth constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Brown Durrell Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business in the city of New York, State of New York.

PAR. 2. That respondent is engaged in the business of selling hosiery and underwear at wholesale, and causes the commodities sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States, and in the conduct of such business is in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent in the course of its business, as described in paragraph 2 hereof, makes use of certain false and misleading labels, which are placed upon the commodities sold by it and upon the boxes in which such commodities are eventually exhibited to the purchasing public when sold at retail; that hosiery and underwear so sold by respondent, made of mixed cotton and wool, have placed thereon and on the boxes containing same the following among other labels, viz, "Worsted," "Fine Wool," "Merino," "All Wool," "Natural Wool," and "Cashmere," which labels are false and misleading and are calculated to and do deceive and mislead the purchasing public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method 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.

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, Brown Durrell Company, 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 by its attorney, and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, 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 and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade 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:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Brown Durrell Company, is a corporation created and existing under the laws of the State of Massachusetts, with its principal office and place of business in the city of New York, State of New York, where it is engaged in the business of selling hosiery at wholesale in the State of New York and throughout the various other States of the United States and the District of Columbia, and causing same to be shipped and transported in commerce from the State of New York through and into the various States of the United States and the District of Columbia, in direct competition with various other firms, corporations, and partnerships similarly engaged.

PAR. 2. That the respondent, prior and up to June 1, 1920, in the conduct of its business as described in paragraph 1 above, sold and shipped to retail dealers hosiery made of mixed cotton and wool in packages or containers labeled and branded "Cashmere" and "Fine Wool" and "All Wool" and "Natural Wool." That in all instances the hosiery itself bore no label or brand to indicate the character, kind, or grade of material or materials entering into the manufacture of said hosiery. The boxes containing it, in some instances, were not labeled or branded with any other word or words to indicate the character, kind, or grade of material or materials entering into the manufacture of said hosiery. That some retail dealers purchasing this hosiery from respondent or from respondent's customers, labeled, advertised, and branded as aforesaid, place it and display it on their shelves in the packages or containers, labeled and branded as aforesaid, and sell said hosiery to the purchasing public from said boxes.

PAR. 3. That the word "Cashmere" when applied to hosiery without any other word or words descriptive of the character, kind, or grade of material or materials from which said hosiery is fabricated, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of high-grade wool. The term "Fine Wool" when applied to hosiery without any other word or words descriptive of the character, kind, or grade of material or materials from which said hosiery is fabricated, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of wool. The term "All Wool" when applied to hosiery without any other word or words descriptive of the character, kind, or grade of material or materials from which said hosiery is fabricated, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of wool. The term "Natural Wool" when applied to hosiery without any other word or words descriptive of the character, kind, or grade of material or materials from which said hosiery is fabricated, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of wool.

PAR. 4. A number of respondent's competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship hosiery which is made of wool and cotton in approximately equal proportions, which hosiery and the packages and containers of which are labeled, advertised, and branded with the words "Wool and Cotton," or with no word or words descriptive of the materials. A number of respondent's competitors, in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery made of high-grade wool and cotton in approximately equal proportions, which hosiery and the packages and containers of which are labeled, advertised, and branded "Cashmere and Cotton," or with no word or words descriptive of said materials.

PAR. 5. The labels or brands under which the respondent sells and ships hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to the composition of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete unfairly with goods of its competitors in interstate commerce, who, as set forth in paragraph 4 above, sell hosiery made of wool and cotton in approximately equal proportions; or hosiery made wholly or in part of other materials then those named, and labeled or branded so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 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 the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, that the 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, Brown Durrell Company, and its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly:

1. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Cashmere," (1) unless the hosiery so labeled, branded, or advertised be composed entirely of wool of a high grade, or (2) unless, when the hosiery is composed partly of cashmere, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

2. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the words "Fine Wool," (1) unless the hosiery so labeled, branded, or advertised be composed entirely of wool, or (2) unless, when the hosiery is composed partly of wool, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

3. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the words "All Wool," (1) unless the hosiery so labeled, branded, or advertised be composed entirely of wool, or (2) unless, when the hosiery is composed partly of wool, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

4. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof the words "Natural Wool," (1) unless the hosiery so labeled, branded, or advertised be composed entirely of wool, or (2) unless, when the hosiery is composed partly of wool, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

Respondent is further ordered, To file a report in writing with the Commission sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

ARISTO HOSIERY COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 685—April 11, 1923.

SYLLABUS.

Where a corporation engaged in the sale at wholesale of hosiery, in competition with concerns who either correctly branded, labeled, and advertised their products with reference to composition, or failed to brand, label, and advertise the same at all in that respect, sold hosiery composed of cotton and wool in approximately equal proportions labeled, branded, and advertised as "worsted ribbed hose," "wool fashioned hose," "women's black cashmere hose," "fashioned cashmere hose," "women's black wool hose fashioned," and "ladies' high grade cashmere"; thereby misleading a substantial part of the purchasing public into believing said goods to be composed of wool:

Held, That the sale of goods labeled, branded, and advertised as above set forth constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Aristo Hosiery Company, hereinafter referred to as respondent, has been and is using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the city of New York, in said State.

PAR. 2. That respondent is engaged in the business of manufacturing and selling hosiery, and causes hosiery sold by it to be transported to the purchasers thereof, from the State of New York, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent, in the course of its business as described in paragraph 2 hereof, places or causes to be placed upon hosiery sold by it, made of cotton and wool in approximately equal proportions, and upon the boxes in which such hosiery is eventually offered for sale by the retail dealers to the purchasing public certain false and deceptive labels, among which are the following: "Worsted Ribbed Hose," "Worsted Fashioned Hose," "Wool Fashioned Hose," "Women's Black Cashmere Hose," "Black Cashmere," "Fashioned Cashmere Hose," "Women's Black Wool Hose Fashioned," "Ladies' High-Grade Cashmere"; which labels are false and misleading and are calculated to and do mislead and deceive the purchasing public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method 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.

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, Aristo Hosiery Company, 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 in its own proper person and filed its answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, 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 and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its finding as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Aristo Hosiery Company, is a corporation duly incorporated and doing business under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, State of New York.

PAR. 2. That the respondent is engaged in the business of selling hosiery, and in causing such hosiery, when sold, to be shipped and transported from the State of New York through and into other States of the United States pursuant to such sales.

PAR. 3. That the respondent, prior to March 1, 1920, in the conduct of its business as described in paragraph 2 above, sold and shipped hosiery made of cotton and wool in approximately equal proportions, labeled, advertised, and branded, and in packages or containers labeled, advertised, and branded "Worsted Ribbed Hose," and "Wool Fashioned Hose," and "Women's Black Cashmere," and "Fashioned Cashmere Hose," and "Women's Black Wool Hose Fashioned," and "Ladies' High Grade Cashmere." That neither the said hosiery nor the boxes containing it were labeled, advertised, or branded with any other word or words to indicate the character, kind, or grade of material or materials entering into the manufacture of said hosiery. That some retail dealers purchasing this hosiery from respondent, or from respondent's customers, labeled, advertised, and branded as aforesaid, place it and display it on their shelves in the packages or containers, labeled and branded as aforesaid, and sell said hosiery to the purchasing public from said boxes.

PAR. 4. That the word "Worsted," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery which is made entirely of wool. That the word "Wool," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of wool. That the word "Cashmere," when applied to hosiery without any other word or words descriptive of the kind or grade of materials, signifies and is understood by a substantial part of the purchasing public to mean hosiery made entirely of a high-grade wool.

PAR. 5. A number of respondent's competitors, in the selling of hosiery, are engaged in interstate commerce selling and shipping their goods from one State into another. That a number of such competitors have sold and shipped, and now sell and ship in said commerce between the States, hosiery which is made entirely of wool, which hosiery and the packages or containers of which are labeled, advertised, and branded "Worsted." That a number of such competitors have sold and shipped, and now sell and ship in commerce between the States, hosiery which is made entirely of wool, which hosiery and the packages or containers of which are labeled, advertised, and branded "Wool." That a number of such competitors have sold and shipped and now sell and ship in commerce between the States, hosiery which is made entirely of a high-grade wool, which hosiery and the packages or containers of which are labeled, advertised, and branded "Cashmere."

PAR. 6. That a number of respondent's competitors, engaged in interstate commerce as aforesaid, have sold and shipped and now sell and ship, hosiery which is made of wool and cotton in approximately equal proportions, which hosiery and the packages or containers of which are labeled, advertised, and branded with the words "Wool and Cotton," or "Worsted and Cotton," or "Cashmere and Cotton," or with no word or words descriptive of the materials.

PAR. 7. The labels or brands under which the respondent sells, advertises, and ships hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to the composition of materials of said hosiery; said labels or brands as so used by respondent cause said hosiery to compete unfairly with goods of its competitors in interstate commerce, who, as set forth in paragraphs 5 and 6 above, sell hosiery made entirely of worsted, wool, wool and cotton, worsted and cotton, or cashmere and cotton; or hosiery made wholly or in part of other materials than those named, and labeled or branded so as to indicate the true composition thereof, or not labeled or branded by any words descriptive of the composition thereof.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 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 the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion, that the 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, Aristo Hosiery Company, and its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly:

1. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Cashmere," (1) unless the hosiery so labeled, branded, or advertised be composed entirely of wool of a high grade, or (2) unless, when the hosiery is composed partly of cashmere it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

2. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Wool," (1) unless the hosiery so labeled, branded, or advertised be composed entirely of wool, or (2) unless, when the hosiery is composed partly of wool, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

3. Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Worsted," (1) unless the hosiery so labeled, branded, or advertised be composed partly of wool, it is accompanied by a word or words aptly and truthfully describing the other material or materials of which the hosiery is in part composed.

Respondent is further ordered, To file a report in writing with the Commission sixty (60) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION
v.
AMERICAN FILM COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 903—April 11, 1923.

SYLLABUS.

Where a corporation engaged in the business of distributing, selling, and leasing motion pictures and photo plays, retitled, reissued, and exploited certain photo plays theretofore issued and exploited by it under their original titles, without stating or indicating in the negotiations and contracts of lease, or in the advertising matter used either in offering the pictures to exhibitors, or to the public, that the same were reissues; with the result that exhibitors and their patrons were misled into believing said reissues to be new pictures:

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

COMPLAINT.

Acting in the public interest 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 charges that the American Film Company, hereinafter referred to as respondent has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent is a Virginia corporation with its principal office and place of business located in the city of Chicago, State of Illinois, now and at all times mentioned engaged in the business of distributing, leasing, and selling motion picture films throughout the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent from its principal office in the city of Chicago makes and enters into contracts of lease or sale for the positive prints of motion picture films which when projected through a machine depict what is known as a motion picture or photo play, with exhibitors throughout the United States by correspondence and traveling salesmen and through its branch offices and local representatives and causes such film, together with great quantities of advertising matter, to be packed, moved, and transported by common carrier to the theaters of these exhibitors located in the principal cities and towns of the United States, where they were displayed or exhibited to the public, after which they are similarly packed, moved, and transported to other theaters in different States for 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 in particular from different States of the United States through other States in and to the city of Chicago, State of Illinois, and therefrom through, in, and to other States of the United States and the District of Columbia.

PAR. 3. That after a photo play has been exhibited generally to the public throughout the United States, in the course of which the film has traveled from city to city and passed a great number of times through projecting machines, such films become second class or old for the reason that having been once generally exhibited to the public they no longer possess novelty or newness and because through such usage frequently a film becomes scratched, marred, or otherwise mechanically injured so that it can not be projected upon the screen with satisfactory clearness and lack of blemish. The films thus exhibited throughout the United States and thereafter released and distributed by the producer for reexhibition are known to the trade and are hereinafter called reissues, and such reissues bring lower prices than films never before released and exhibited. It is the custom and usage of the trade, and it was so understood between respondent and its customers, that unless otherwise specifically agreed between dealer and exhibitor the films released shall depict new photo plays not theretofore exhibited or shown to the public in the locality in which exhibitor's theater is located, and it is also customary for the dealer to furnish in connection with the films sold or leased posters, bills, lantern slides, lobby cards, and other advertising matter to be used by the exhibitor in announcing and exploiting the exhibition of such films to the public.

PAR. 4. That prior to the year 1919 the respondent released certain films theretofore produced by it which depicted photo plays titled, respectively, The Mate of the Sally Ann, Snap Judgment, The Torch Bearer, In Bad, Faith, Annie for Spite, The Manager of the B. & A., Judith of the Cumberlands, The Frame Up, My Fighting Gentleman, Youth's Endearing Charms, The Marriage Bargain, The Diamond Runners, The Lass of the Limberlands, and New York Luck, and thereafter distributed, leased, and advertised the same, and these films were extensively exhibited to the public in theaters throughout the United States and became well known to the motion picture theater going public under and by their respective titles. In the years 1919 and 1920 the respondent in the conduct of its business as aforesaid reissued such films after adding thereto in some instances an inconsequential amount of new or additional matter under new titles, respectively, as follows, to wit: Peggy Rebels, Slam Bang Jim, From the West, Quick Action, The Virtuous Outcast, Sally Shows the Way, The Man from Medicine Hat, The Moonshine Menace, High Gear Jeffrey, a Rough Shot Fighter, Youth's Melting Pot, The Innocence of Lizette, A Crook's Romance, The Loggers of Hell Roarin' Mountain, and A Live Wire Hick, and released, distributed, advertised, and leased such reissues without apprising the public of the fact that they were reissues being distributed under new titles and without indicating or stating the same in either the photo plays themselves or in the posters, bills, slides, lobby cards, and other advertising matter furnished by the respondent and used in exploiting such exhibitions; and such advertising matter either wholly failed to state or set forth that these films had been formerly released under the aforesaid old titles or contained equivocal statements in this respect printed in such type as not to be readily observed, and which did not fairly convey the information that such films were reissues, and the respondent did not in any manner disclose to the exhibitors that such films were reissues, but on the contrary supplied the same in the ordinary course of business as and for new releases and charged the exhibitors for the privilege of exhibiting the same the price regularly charged for the right to exhibit new or current releases; and said exhibitors upon receiving these reissues and advertising matter exhibited the same to the public and used the advertising to exploit such exhibition without knowing and therefore without disclosing to the public the fact that the films were reissues. In some of the photo plays depicted by these films the leading rôles had been enacted by an actor or actress in the employ of the respondent who had become well known to and popular with the general public, commonly known as stars, and the popularity of these photo plays had originally largely depended upon the fact that such stars enacted the leading rôles and in some instances the stars who had enacted such leading rôles as aforesaid had severed their connection with the respondent before the time said plays were reissued and had entered the employment of competitors of the respondent, and at the time these reissues were being distributed and exhibited such stars were appearing in productions of these competitors and lending thereto the same value and popularity. That the reissuing, leasing, and advertising of such films as aforesaid had the capacity and tendency to and did mislead and deceive exhibitors and cause them to believe that they were leasing and exhibiting new films never before released, and similarly caused their patrons to attend exhibitions of such films in the belief that they were to see new photo plays never theretofore shown, and by reason thereof injuring the reputations of such exhibitors and causing them to lose the good will and patronage of the motion picture going public, and had the further capacity and tendency unduly to hinder competitors of the respondent who did not release, distribute, lease, advertise, and exhibit reissued films under new titles, and to discredit the stars who enacted the leading rôles in such reissues, and to discredit the productions of competitors of respondent in which said stars were appearing before the public at the same period of time that these reissues were being similarly exhibited, and thus to prejudice the public against said stars and said competing productions.

PAR. 5. That the above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said 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.

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 respondent, American Film Company, charging it with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent, American Film Company, having filed its answer, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed, at which hearings the respondent appeared and was represented by counsel.

And thereupon this cause came on for final hearing upon the complaint and the answer thereto, brief by the Commission, report of the trial examiner, and was argued by counsel, 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 conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, the American Film Company, is and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business in the city of Chicago, State of Illinois, and engaged in and throughout the various Territories and States of the United States in the business of distributing, leasing, and selling motion pictures and photoplays to owners and operators of motion picture theaters (hereinafter called exhibitors) for exhibition to the public, and is similarly engaged in distributing motion pictures and photo plays to persons, partnerships, and corporations (hereinafter called state-righters) for limited redistribution to exhibitors within specified territories. In the conduct of such business, respondent is now and at all times hereinafter mentioned was in competition with other persons, partnerships, and corporations similarly engaged in the business of distributing, leasing, and selling motion pictures and photo plays.

PAR. 2. In distributing to exhibitors and state-righters its motion pictures respondent's method of doing business is as follows: It makes positive photographic prints of motion pictures and photo plays previously produced by it, which prints it arranges and packs in such a manner as to be adapted for use in motion-picture projecting machines. These positive prints are hereinafter mentioned simply as prints. Such prints are shipped from respondent's aforesaid place of business in the city of Chicago to its local leasing agents in various States throughout the United States and to said state-righters, both of whom in turn deliver them to exhibitors for presentation to the public. The motion pictures and photo plays thus furnished for exhibition are known to the trade as and are hereinafter called releases. In the instances in which the prints are distributed by respondent itself to the exhibitors, there are contracts of lease executed between the exhibitors and the Chicago office of respondent, by the terms and provisions of which respondent undertakes to supply prints of certain named releases to the exhibitors, together with the right to exhibit them for a stated period in consideration of a stipulated sum, which the exhibitors agree to pay.

PAR. 3. When a motion picture or photo play has run the usual course of exploitation and exhibition generally throughout the United States, or any considerable portion thereof during one or more theatrical seasons, and demand therefor and/or exploitation thereof have practically ceased, so that the picture has for a substantial length of time had no appreciable amount of projection in motion-picture theaters generally throughout the United States or any considerable portion thereof; then, if a new exploitation of such picture is made by the producer or a distributor, during a subsequent theatrical season, together with a fresh complement of advertising matter, in an effort to lease to exhibitors new or old prints of the photographic negative of such former production of scenes and action, the act of the producer or distributor in so doing is commonly and generally known and designated by the trade and the public as the reissue of the picture. When a new title is given to a picture upon its reissue, as above described, it is the well established and generally accepted and practiced custom and usage in the industry to append a statement to the main titles, on the films, and in the advertising and publicity matter, and in the contracts of lease to exhibitors, that the picture is a reissue or revival of a picture of a stated title.

PAR. 4. Some time prior to the year of 1917 the respondent released the following motion pictures:

The Mate of the Sally Ann.
Snap Judgment.
New York Luck.
My Fighting Gentleman.
The Innocence of Lizette.
Faith.
The Torch Bearer.
The Manager of the B. & A.
Youth's Endearing Charm.
The Frame Up.
The Lass of the Limberlands.
In Bad.
Annie for Spite.
Judith of the Cumberlands.
The Diamond Runners.

Beginning with the year 1915 these pictures were distributed for the respondent by Mutual Film Corporation and its successor, Exhibitors' Mutual Distributing Corporation, and during such distribution they were extensively exploited and exhibited throughout the entire United States. Demand therefor having ceased, about half of these pictures were withdrawn from the market in the year of 1917; and due to a severance of relations between such distributors and respondent, and also due to cessation of demand therefor, the remainder were withdrawn from the market in 1918.

PAR. 5. During the years of 1919 and 1920 respondent reissued such old pictures under new titles as follows, respectively:

Peggy Rebels.
Slam Bang Jim.
A Live-Wire Hick.
Youth's Melting Pot.
High Gear Jeffrey.
The Loggers of Hell Roarin' Mountain.
A Rough Shod Fighter.
The Marriage Bargain.
The Virtuous Outcast.
From the West.
Quick Action.
Sally Shows the Way.
The Moonshine Menace.
A Crook's Romance.
The Man from Medicine Hat.

These reissued pictures were distributed to exhibitors in some instances directly by respondent and in other instances by state-righters. By these means such pictures were furnished to exhibitors throughout the various States of the United States and were by them exhibited to the public.

PAR. 6. Under both of these methods of distribution, the advertising matter used in offering the pictures to the exhibitors, and used by the exhibitors in offering the pictures to the public, was furnished by respondent. Such advertising matter conspicuously displayed the new titles in large type, followed in small type by the words "Adapted from," which were followed in turn by the old titles in much smaller type than the new titles. In case of three of these reissues, namely, "Sally Shows the Way," "Quick Action," and "The Man from Medicine Hat," the advertising, which was furnished by respondent to exhibitors for use by them in offering the pictures to the public, had the word "formerly" in place of the words "Adapted from" preceding the old titles as above described; but the advertising furnished by respondent for use by its salesmen and by state-righters in offering such pictures to exhibitors, in all cases contained the words "Adapted from" as first above described.

PAR. 7. The contracts of lease under which respondent furnished these pictures to exhibitors in the States of New York and New Jersey did not disclose that the pictures to be furnished would be reissues. The salesmen of respondent, in the course of negotiations leading up to and consummating said contracts of lease with said exhibitors, furnished no information to such exhibitors to the effect that such pictures were reissues.

PAR. 8. Said advertising matter so furnished by respondent, and used by both respondent and said state-righters in offering such pictures to exhibitors, and used, in turn, by the exhibitors in advertising such pictures to the public, contained no matter, statement, or information which in any manner gave notice that such reissued pictures formerly had been released and exhibited to the public under other titles.

PAR. 10. The acts and conduct of respondent in so offering and holding out its said reissued pictures to the trade and general public as aforesaid, caused exhibitors and exhibitors' patrons in the States of New York and New Jersey to believe that these reissued motion picture photoplays were new pictures, whereas in truth and in fact they were reissues. The acts and conduct of respondent in so offering and holding out its said reissued pictures to the trade and general public as aforesaid, had the capacity and the tendency to cause exhibitors and exhibitors' patrons in various States of the United States to believe that these reissued motion picture photoplays were new pictures, whereas in truth and in fact they were reissues.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances described 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings, the testimony and evidence received by an examiner duly appointed by the Commission, the report of said examiner upon the facts and conclusion, the exceptions thereto, and the brief of counsel for the Commission, 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, American Film Company, its agents, servants, and employees, cease and desist from, directly or indirectly, advertising, selling, or leasing, or offering to sell or lease, reissued motion picture photo plays under titles other than those under which such photo plays were originally issued and exhibited, unless the former titles of such photo plays and the fact that they theretofore have been exhibited under such former titles, be clearly, definitely, distinctly, and unmistakably stated and set forth, both in the photo play itself and in any and all advertising matter used in connection therewith, in letters and type equal in size and prominence to those used in displaying the new titles.

And it is further ordered, That the respondent, American Film Company, shall file with the Commission, within thirty (30) days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to.

FEDERAL TRADE COMMISSION

v.

ELI HYMAN AND LOUIS M. ZASLAV, PARTNERS, DOING BUSINESS UNDER THE NAME AND STYLE OF HYMAN AND ZASLAV.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 948—April 11, 1923.

SYLLABUS.

Where a firm engaged in the sale to dealers of toilet articles composed of nitrated cellulose grained to simulate ivory; with a capacity and tendency to mislead and deceive a substantial part of the purchasing public, indelibly branded and labeled said toilet articles "French ivory" and so sold the same; with the result that unscrupulous dealers were enabled to misrepresent such articles, and with a capacity and tendency to induce consumers to purchase the same as and for ivory:

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

COMPLAINT.

Acting in the public interest 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 charges that Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Eli Hyman and Louis M. Zaslav, are partners, doing business under the name and style of Hyman & Zaslav, at 83 Bowery, New York City. They are now and at all times hereinafter mentioned have been engaged in the jobbing of silverware, toilet articles, and novelties, and in the conduct of said business cause said silverware, toilet articles, and novelties, so dealt in by them, to be transported to wholesale and retail dealers thereof from the State of New York through and into other States of the United States. In the course of said business respondents continuously have been and are now in competition with other persons, partnerships, and corporations engaged in similar business in interstate commerce.

PAR. 2. Respondents for the two years last past have been dealing in toilet articles composed of nitrated cellulose grained to imitate ivory, which are purchased from several different manufacturers in a finished state; for more than two years last past they labeled or branded, and are now labeling and branding, said toilet articles "French Ivory"; and in the course of said business for more than two years last past respondents have sold said toilet articles to wholesale and retail dealers thereof as "French Ivory," so that said wholesale and retail dealers are enabled to and do sell said toilet articles to the consuming public as "French Ivory."

PAR. 3. The words "French Ivory" used by respondents in branding or labeling their toilet articles as aforesaid, signify to and are understood by a substantial part of the purchasing public to mean ivory; and as used by said respondents as aforesaid they are false and tend to mislead the purchasing public to believe the articles so branded or labeled are composed of genuine ivory.

PAR. 4. There are a considerable number of dealers in toilet articles manufactured from genuine ivory. There are also many dealers in toilet articles manufactured from nitrated cellulose who do not brand or label their toilet articles "French Ivory" or sell said toilet articles as "French Ivory" or otherwise indicate to the purchasing public that their toilet articles are manufactured from ivory.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' 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.

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, Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, charging them with the use of unfair methods of competition in violation of the provisions of said act. The respondents having entered their appearance and filed their answer herein, a statement of facts was agreed upon by counsel for the Commission and counsel for respondent, to be taken in lieu of evidence. And thereupon this proceeding came on for final hearing, 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 conclusion:

FINDING AS TO THE FACTS.

PARAGRAPH 1. Respondents, Eli Hyman and Louis M. Zaslav, are and have been since 1915, partners, doing business at 83 Bowery, New York City, under the name and style of Hyman & Zaslav. They are now and at all times hereinafter mentioned have been engaged in the jobbing of silverware, toilet articles, and novelties, and in the course and conduct of their business sell such silverware, toilet articles, and novelties to wholesale and retail dealers throughout the eastern portion of the United States, and cause such products so sold by them to be transported to the purchasers thereof from the State of New York through and into other States of the United States. In the course of said business respondents continuously have been and are now in competition with other persons, partnerships, and corporations engaged in similar business in interstate commerce.

PAR. 2. The toilet articles dealt in by respondents are composed of nitrated cellulose, grained to simulate ivory, and are procured by them from a number of different manufacturers. For more than two years prior to the issuance of the complaint herein, respondents purchased such toilet articles in a finished state but unmarked, and labeled or branded them indelibly with the words "French Ivory." The articles so branded were then packed by respondents in cases and boxes, and sold by them, in the regular course and conduct of their business, as described above in paragraph 1, to wholesale and retail dealers throughout the eastern portion of the United States.

PAR. 3. The use by respondents of the words "French Ivory" as a brand for toilet articles composed of nitrated cellulose, enabled unscrupulous dealers to whom such articles were sold to misrepresent same in reselling to the public, and, in the absence of such misrepresentations, had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public, by creating in the minds of the public false and erroneous beliefs concerning the value and quality of said articles, and in some instances to induce ultimate consumers to purchase said articles upon the mistaken belief that they were procuring toilet articles made of ivory.

PAR. 4. There are considerable number of dealers in the United States who sell toilet articles manufactured from genuine ivory. There are also many dealers in toilet articles manufactured from nitrated cellulose who do not brand or label such articles "French Ivory" but sell same unbranded.

PAR. 5. On May 17, 1920, at a conference of representatives of manufacturers and dealers in various basic materials, sometimes known commercially as "Celluloid," "Pyralin," etc., and the manufacturers of and dealers in various articles made from these basic materials, which conference was called by the Federal Trade Commission to meet at its offices at Washington, D. C., a resolution was passed which condemned the use as applied to articles made from these basic materials, of the following and similar terms: "French Ivory," "Pyroxylin Ivory," "Tortoise Shell," "Ivory," "Florentine Shell Ivory," "Pyralin Ivory," "Jade," "Coral," "American Ivory."

CONCLUSION.

The practices of the said respondents under the conditions and circumstances described 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto and a stipulation as to the facts filed herein, and the Commission having made its report in which it stated 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, Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, their agents, representatives, servants, and employees, do cease and desist from:

1. Representing by any label, brand, or advertisement, that toilet articles and other wares sold by them are "French Ivory" or "Ivory" unless such articles and wares are made from animal ivory, and

2. Using the word "Ivory" as a part of any label, brand, or advertisement of toilet articles and other wares which are not made from animal ivory except as an adjective of color or finish; except that "imitation ivory" may be used to designate such product.

It is further ordered, That the said respondents, Eli Hyman and Louis M. Zaslav, partners, doing business under the name and style of Hyman & Zaslav, shall within thirty (30) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

JOHN T. BAILEY, TRADING UNDER THE NAME AND STYLE OF UNITED FIBRE WORKS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 955—April 11, 1923.

SYLLABUS.

Where an individual engaged largely in the purchase and sale of manila rope originally manufactured for use in the World War, but by reason of age, storage, handling, and other causes no longer the equal of new rope of recent manufacture;

(a) Advertised and represented the same as "Best Pure Manila Rope," "First Grade Best Pure Manila Rope," and otherwise to the same effect, without disclosing the facts relative to its age, etc.; with a tendency and capacity to induce the purchase thereof as and for best grade manila rope of recent manufacture;

(b) Adopted and used as a trade or business name the name United Fibre Works;

(c) Used letterheads bearing the legend, among others, "UNITED FIBRE WORKS * * *, successors to JOHN T. BAILEY CORDAGE CO., established 1854. MILLS, Liverpool, Auburn, N. Y., Philadelphia. EXPORT DEPARTMENT"; the fact being that he neither owned, operated, nor was interested in any factory manufacturing cordage, nor was connected in any way with the John T. Bailey Cordage Co.;

With a tendency and capacity to induce the public to purchase of him under the mistaken belief that he controlled or operated a factory in which the product offered by him was made:

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

COMPLAINT.

Acting in the public interest 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 charges that John T. Bailey, trading under the name and style of United Fibre Works, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Said respondent, trading under the name and style of United Fibre Works, is now and for more than two years last past has been engaged in buying and selling manila rope and as sales agent for manufacturers of oakum, cotton, hemp, and jute twine. In the course and conduct of said business said respondent causes and has caused said products, when sold by him, to be transported from warehouses in the city of New York, State of New York, to the purchasers thereof at points in the various States of the United States. Said respondent, in the course of his said business, is now and has been in competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent conducts his business dealings under his trade name, "United Fibre Works," and uses in his correspondence with prospective customers and on circular letters mailed to prospective customers in various States letterheads containing the following, to wit:

UNITED FIBRE WORKS
296 Broadway
New York City

Phones Worth 248, 249, 250, 251

MILLS
Liverpool
Auburn, N. Y.
Philadelphia.

Successors to
JOHN T. BAILEY CORDAGE CO.
Established 1854.

EXPORT
DEPARTMENT

Respondent by the use of said letterhead represents and has represented himself to be a manufacturer of cordage with mills at Liverpool, England, Auburn, N. Y., and Philadelphia, Pa., and that he is the successor of the John T. Bailey Cordage Company, which company was, until recently, a large and long-established manufacturer of cordage; whereas in truth and in fact respondent does not manufacture cordage, nor own, control, or operate any factory in which cordage is manufactured, and is not in any sense the successor of the said John T. Bailey Cordage Company. Said representations are false and misleading, and have the tendency and capacity to mislead and deceive the public and prospective customers of respondent into the mistaken belief that the respondent is a large manufacturer of cordage and owns or operates numerous factories, and that persons buying from said respondent are buying direct from the manufacturer of the products offered for sale, thereby saving the profits of the middleman.

PAR. 3. The words, "United Fibre Works," as used by the respondent in his trade name and on his circulars and letterheads, as above set forth, are false and misleading and have the capacity and tendency to mislead and deceive the purchasing public and induce them to believe that the respondent owns, controls, or operates a factory or factories in which is manufactured the rope, twine, and cordage offered for sale by him, and that persons buying from said respondent are buying direct from the manufacturer, thus saving the profits of the middleman.

PAR. 4. The rope which is and has been bought and sold by said respondent in the conduct of his business, as aforesaid, is what is generally known as " Government Rope," and consists of rope that was manufactured by large and well-known rope manufacturers in the United States and sold to the United States Government during the World War and prior to the year 1919, and which had been shipped to Europe, where it was stored and later reshipped to the United States and stored in various warehouses in this country and which by reason of its age and other causes had deteriorated. The said respondent, in the course and conduct of his business in the purchase and sale of said rope, advertised and represented on his letterheads and circular letters, which he mailed to prospective customers in various States, said rope as " Best Pure Manila Rope," " First Grade Best Pure Manila Rope," " First Grade Pure Manila Rope," and by other descriptions to the effect that the rope handled by said respondent was of the best quality of manila rope without disclosing to the prospective purchasers in said circulars, letters, or otherwise the facts relative to the age, storage, and handling of said rope, as in this paragraph of the complaint set forth, and that each and all of said advertisements and representations were false and untrue and had and now have the tendency and capacity to induce the public and prospective customers to purchase said rope from the respondent in the belief they were purchasing the best grade of manila rope of recent manufacture.

PAR. 5. That there are numerous manufacturers of rope who have manufactured and sold and do now manufacture and sell in interstate commerce to the purchasing public and to retailers the best grade of new manila rope in competition with said respondent. There are also a number of jobbers and brokers of rope, twine, and cordage who have sold and do now sell in competition with said respondent who do not advertise themselves as manufacturers.

PAR. 6. The above alleged acts and things done by respondent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, John T. Bailey, trading under the name and style of United Fibre Works, charging him 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 herein admitting that certain of the methods and things alleged in said complaint are true in the manner and form therein set forth, and having made, executed, and filed an agreed statement of facts in which it is stipulated by respondent that the Federal Trade Commission shall take such statement of facts as the facts in the case in lieu of testimony and proceed forthwith upon said statement 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 the Federal Trade Commission being now fully advised in the premises, make this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, John T. Bailey, is now and since about January 1, 1922, has been engaged at New York City in buying and selling manila rope, and other rope and cordage. In the course and conduct of his said business, said respondent has caused the products sold by him to be transported from warehouses in the city of New York, State of New York, to the various purchasers thereof at different points in the various States of the United States.

PAR. 2. The respondent has conducted his business dealings, until recently, under the trade name "United Fibre Works" and used in his correspondence with prospective customers and on circular letters mailed to prospective customers in various States, letterheads as follows, to-wit:

	UNITED FIBRE WORKS 296 Broadway New York City	Phones Worth 248, 249, 250, 251
MILLS Liverpool Auburn, N. Y. Philadelphia	Successors to JOHN T. BAILEY CORDAGE CO. Established 1854	EXPORT DEPARTMENT

PAR. 3. The said John T. Bailey Cordage Company referred to in said letterhead was until recently a long established concern engaged, among other things, in the manufacture of rope and other cordage products at Philadelphia, Pa. The respondent at no time since he

has been engaged in business as aforesaid has manufactured rope or other cordage, or owned, controlled, or operated any factory in which cordage was manufactured, and has not been and is not now a manufacturer, and is not the successor of John T. Bailey Cordage Company. The representations set forth in the letterhead of respondent and otherwise are misleading and have the tendency and capacity to induce the public and prospective customers to purchase of the respondent in the mistaken belief that the respondent is the manufacturer of the products offered for sale by him, and the words "United Fibre Works" constituting the trade name of respondent, either alone or in connection with the other representations contained in the letterhead, have the tendency to induce the belief on the part of the purchasing public that the respondent owns, controls, or operates a factory in which is manufactured the products offered for sale by him.

PAR. 4. Respondent has dealt largely, though not exclusively, in manila rope, which rope was manufactured by cordage manufacturers in the United States, France, and England as war supplies, and sold to the Government of France prior to the year 1919. Subsequently this rope was resold by the French Government and reached, through various channels, dealers in the United States from whom respondent obtained his requirements. Said rope was from the time of its manufacture stored in various places and handled many times, and by reason of its age, storage, handling, and other causes had deteriorated in value, and was not so good in quality as new rope of recent manufacture. In the course and conduct of his business respondent has advertised and represented by means of letters, circular letters, and otherwise, the war rope above described as "Best Pure Manila Rope," "First Grade Best Pure Manila Rope," and by other descriptions to the effect that the rope handled by said respondent was of the best quality manila rope without disclosing the facts relative to the age, storage, and handling of said rope as in this paragraph set forth. That said representations were and are misleading, and have the tendency and capacity to induce the public and prospective buyers to purchase said rope in the belief that it is the best grade manila rope of recent manufacture.

PAR. 5. That there are numerous manufacturers of rope who have manufactured and sold and do now manufacture and sell in interstate commerce to the purchasing public and to retailers the best grade of new manila rope in competition with said respondent. There are also a number of jobbers and brokers of rope, twine, and cordage who have sold and do now sell in competition with said respondent who do not advertise themselves as manufacturers.

CONCLUSION.

The practices of the 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 the respondent and agreed statement of facts filed herein, 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, John T. Bailey, do cease and desist from directly or indirectly:

1. Doing business under the trade name of "United Fibre Works," unless and until he shall have become a manufacturer of rope or other cordage;

2. Representing on his letterheads, or otherwise, that he is the successor of the John T. Bailey Cordage Company, or any other manufacturer of cordage;

3. Representing in any manner that he is a manufacturer of rope, when such is not the fact;

4. Selling, or offering to sell as new or of best quality rope, rope manufactured in the United States, or elsewhere, for use in the World War.

It is further ordered, That the respondent, John T. Bailey, shall within sixty (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.

FEDERAL TRADE COMMISSION

v.

WILLIAMS SOAP COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 896—April 12, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture of ordinary unmedicated soaps, which were neither made by, under the auspices or direction of, or in accordance with the formula of, any doctor or medical association, which it packed in wrappers and cartons or boxes, together with leaflets describing the same, and which were sold by it through street vendors, peddlers and other dealers; in branding, labeling, and advertising the same,

(*a*) Used such legends as "Dr. William's Antiseptic Soap," "endorsed by eminent physicians throughout the land"; "Dr. Hood's Cuticle Soap," "removes tan, pimples, etc.," "White Wonder Soap," "manufactured by U. S. Medical Association," "Hot Springs Sulphurine Cream Soap, manufactured for National Medical Association," "Cutamulsion, distributed exclusively by the National Medical Association," "Dr. Tangway's Skin Soap," "Crocodile Medicine Company" (a private brand prepared for one of its dealer customers), etc.; with a tendency and capacity to injure competitors and mislead and deceive purchasers and the general public into believing that said soaps contained curative and healing qualities not possessed by other soaps of like kind;

(*b*) Made such statements, in describing the composition of said soaps, as "free from all acids, strong alkali, animal fats, or any other harmful substances," "medicated according to the latest knowledge of antiseptics," "clean and sweet enough to be eaten," etc.; the fact being that the soaps so characterized were neither free from fatty acids, nor unsaponified matter, nor medicated according to the latest knowledge of antiseptics or at all, and did not constitute toilet soaps of high grade:

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

COMPLAINT.

Acting in the public interest 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 charges that Williams Soap Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of Indiana, with its principal office and place of business in Indianapolis, Ind. For more than one year last past it has been and now is engaged in the manufacture of soap and the sale thereof in interstate commerce. Its method of doing business is as follows: Respondent inserts advertisements in theatrical magazines and other publications of general circulation in various States of the United States, soliciting orders for its soaps from street venders, peddlers, and other dealers. Upon receiving inquiries regarding its said soaps, respondent sends to the inquirer its catalogues and other literature picturing and describing its soaps and setting forth the prices charged by respondent therefor. Upon receiving orders for its soaps, respondent causes the soap so ordered to be transported from its place of business in Indianapolis, Ind., to purchasers at various points among the several States of the United States, and in the course and conduct of its said business, respondent is engaged in interstate commerce, in competition with other persons, partnerships, and corporations similarly engaged, and with the trade generally.

PAR. 2. Respondent makes numerous false and misleading statements in its said catalogues and other literature concerning the origin, nature, quality, and value of the soaps made by it and puts out said soaps under various names which import origin, nature, quality, and value which said soaps do not possess; said soaps are packed in boxes, wrappers, and containers, upon which the respondent has caused to be printed the name of the respective soap, and false and misleading statements with regard thereto similar to the names and statements appearing in its catalogues and literature as above set out. The said names and statements are used by the respondent in its said catalogues and other literature and upon the cakes of said soaps and said boxes, wrappers, and containers so as to directly assert or clearly import and imply:

(*a*) That some of said soaps are medicated and possess curative and healing properties;

(*b*) That certain of said soaps are medicated and made by or according to the formula of a physician and that the medicaments in said soaps and prescribed by medical authority, and that said soaps possess curative and healing properties;

(*c*) That other of said soaps are made and endorsed by a national association of physicians, and contain medicaments prescribed by competent medical authority, and possess curative and healing properties.

PAR. 3. In the course of its business, as aforesaid, the respondent has manufactured and sold in interstate commerce certain lines of ordinary unmedicated soap and has named, labeled, branded, and advertised said soap as National Hygienic Soap; Antiseptic Shaving Soap; Pumola Soap. Such names, labels, brands, and advertisements are false and misleading, and have the tendency and capacity to injure competitors and to mislead and deceive purchasers and the general public into the belief that said soaps above described are medicated and possess healing and curative properties not possessed by other soaps of like kind.

PAR. 4. The respondent, in the course of its business as aforesaid, has manufactured and sold in interstate commerce certain lines of ordinary unmedicated soap, and has named, labeled, branded, and advertised certain such soaps as follows:

(*a*) Dr. William's Antiseptic Soap. Upon the carton or container in which each cake of this soap is packed there appears the printed statement "Indorsed by Eminent Physicians throughout the Land." In respondent's catalogues there is printed the statement that this soap "is highly recommended and used by many noted physicians and surgeons because of its absolute purity and superior quality."

(*b*) Dr. Hood's Cuticle Soap. Upon the carton or container in which this soap is packed there appears the printed statement "Removes tan, pimples, etc. An ideal skin tonic. Cleansing, soothing and healing." In respondent's catalogues there is the printed statement that this soap is "medicated according to the latest knowledge of antiseptics."

(*c*) Dr. Tangway's Skin Soap. Upon the carton or container in which each cake of this soap is packed the following printed statements appear: "Crocodile Medicine Co."; "The richest, most lasting and refined of all cleansing preparations"; "Ideal for use in the sick room"; "This preparation is superior to any other made for the bath, toilet and nursery."

Such names, labels, brands, and advertisements are false and misleading and have the tendency and capacity to injure competitors and to mislead and deceive purchasers and the general public into the belief that said soaps above described contain medicaments prescribed by competent medical authority and are made respectively by or according to the formula of physicians or surgeons, and possess curative and healing qualities not possessed by other soaps of like kind.

PAR. 5. The respondent in the course of its business as aforesaid has manufactured and sold in interstate commerce certain lines of ordinary unmedicated soap and has named, labeled, branded, and advertised said soap as follows:

(*a*) White Wonder Soap. Upon the carton or container in which each cake of said soap is packed appears the printed statement "Manufactured only by U. S. Medical Ass'n";

(*b*) Nature's Vegetable Soap. Upon the container in which each cake of said soap is packed appears the printed statement "Manufactured by U. S. Medical Ass'n.";

(*c*) Hot Springs Sulphurine Soap. Upon the container in which each cake of said soap is packed appears the printed statement "Manufactured only by U. S. Medical Association," or words to that effect;

(*d*) Cutamulsion. Upon the container in which each cake of said soap is packed appears the printed statement "Distributed Exclusively by National Medical Association." In respondent's said catalogue and other literature advertising this soap there appears the printed statement "Cutamulsion. The great Skin Tonic."

Such names, labels, brands, and advertisements are false and misleading and have the tendency and capacity to injure competitors and to mislead and deceive purchasers and the general public into the belief that said soaps above described and named, labeled, and advertised as aforesaid, are made and endorsed by a national association of physicians, and are medicated and possess curative and healing properties not possessed by other soaps of like kind.

PAR. 6. In its aforesaid catalogues and other literature the respondent offers to manufacture for dealer customers soaps denominated by the respondent as "private brands." Under said name the respondent offers to its trade certain soaps put out under names chosen by the dealers and stamped upon said soaps, and having upon the boxes, wrappers, and containers in which said soap is packed such statements and representations as the dealer may request. Respondent puts out such private brands under various names in connection with false and misleading statements upon the boxes, wrappers, and containers in which said soaps are packed, which statements assert or imply qualities concerning said private brands which are false and misleading; namely, that some of said soaps are medicated and possess curative and healing properties, and certain of said soaps are medicated and made by or according to the formula of a physician and possess curative and healing properties, and that other of said soaps are made by the National Association of Physicians and are prescribed by competent medical authority and are medicated and possess curative and healing properties. Specific instances of soap so made, advertised, and sold by the respondent are as follows:

(*a*) Dr. Tangway's Skin Soap. Upon the carton in which each cake of this soap is packed there appears the following printed statement, "Dr. Tangway's Skin Soap"; "Most lasting and refined of all cleansing preparations"; "This preparation is superior to any other made for the bath, toilet and nursery"; "Crocodile Medicine Co."

(*b*) Crawford's Scalp Soap. Upon the carton in which each cake of this soap is packed there appears the printed statement "Crawford's Medc. Company." "It is the best preparation made for cleansing and purifying the skin"; "Superior to all soaps for the toilet, bath and nursery."

Such names, labels, brands and advertisements are false and misleading and when used by the respondent as above described have the tendency and capacity to injure competitors and to mislead and deceive purchasers and the general public into the belief that said soaps above described are medicated and prescribed by competent medical authority, and are made by or according to the formula of physicians or surgeons, and possess healing and curative properties not possessed by other soaps of like kind.

PAR. 7. Upon the container in which each cake of certain of its soaps is packed, the respondent causes to be printed the words "price 25 cents." The said soaps so marked are sold by the respondent to its dealers at 5 cents or less per cake, and it is not contemplated by respondent that said soaps will be sold at the retail price of 25 cents per cake but that the retail price thereof will be substantially less than 25 cents per cake. In its said catalogues and other literature the respondent suggests to its dealer customers that said soaps may be sold at a price below the sum of 25 cents, or that one or two cakes of such soaps may be given free with each cake purchased at the price of 25 cents. The printed statement "price 25 cents" appearing on said soap containers is fictitious, and respondent does not intend that soaps so marked by it will be sold by its dealer customers at 25 cents per cake. Such statements made by the respondent are false and misleading and have the tendency and capacity to injure competitors and to mislead and deceive the purchaser and the general public into the belief that such soaps on which said printed statements appear are intended to be sold at retail for 25 cents per cake, and that in purchasing said soaps for a price substantially less than 25 cents per cake, or in receiving one or two cakes free with the purchase of one cake at 25 cents, the purchaser will obtain said soaps at a bargain price and at a price substantially less than its fair retail value.

PAR. 8. The acts and things done by the respondent, as hereinabove alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provision of an Act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Williams Soap Company, 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, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint and on behalf of respondent before John W. Bennett, an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel having submitted briefs 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 conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under and existing by virtue of the laws of the State of Indiana, with its principal office and place of business in Indianapolis, Indiana. For many years last past respondent has been and now is engaged in the manufacture of soap and the sale thereof in interstate commerce throughout the several states of the United States. Said repondent was organized about 1895 by one William Williams and his brother, of Indianapolis, Indiana, but its stockholders have changed several times, and since about 1903 respondent has been under the management and control of Jesse M. Daily and others, not its original organizers. Said William Williams had an uncle known as Dr. Williams. It does not appear that any Dr. Williams was ever connected with respondent corporation. Since 1903 it is certain that no Dr. Williams has been so connected.

PAR. 2. In conducting said business respondent inserts advertisements in theatrical magazines and other publications of general circulation in the several States of the United States, soliciting orders for its soaps from street vendors, peddlers, and other dealers. Respondent also appoints exclusive sales agents for its said products at points in several States of the United States. Upon receiving inquiry regarding its said soaps, respondent sends to the inquirer its catalogue, price lists, and other literature describing its soaps and setting forth the price charged by respondent therefor. Upon receiving orders for its soap, respondent causes the soap so ordered to be transported from its place of business in Indianapolis, Indiana, to purchasers at various points among the several States of the United States, and in the course and conduct of said business respondent is engaged in interstate commerce in competition with other persons, partnerships, and corporations similarly engaged and with the trade generally.

PAR. 3. Said soaps so sold by respondent are packed in cartons, boxes, wrappers, or containers on which the respondent has caused to be printed the trade names or brands of the respondent's soaps, and within said containers are often placed leaflets or circulars describing said soaps and setting forth their qualities.

PAR. 4. The respondent, in the course of its business as aforesaid, has manufactured and sold in commerce certain lines of ordinary unmedicated soaps, and upon said cartons, boxes, wrappers, containers, and/or circulars mentioned in paragraph 3 hereof, and in the catalogues and other literature mentioned in paragraph 2 hereof, respondent has caused to be printed false and misleading statements with regard to said soaps. Said statements are used by respondent in said catalogues and other literature and upon the said cartons, boxes, wrappers, and/or containers so as to directly assert or clearly import or imply:

(*a*) That some of such soaps are medicated and possess curative and healing properties.

(*b*) That certain of said soaps are medicated and made by or according to the formula of a physician, and that the medicaments in said soaps are prescribed by medical authority, and that said soaps possess curative and healing properties.

(*c*) That other of said soaps are made and endorsed by a national association of physicians and contain medicaments prescribed by competent medical authority, and possess curative and healing properties.

1. Under the trade name and designation of "Dr. Williams Antiseptic Soap" respondent manufactures and sells as above indicated a brand of ordinary unmedicated soap, and upon the carton or

container in which each cake of this soap is so packed there appears the printed statement, "Endorsed by eminent physicians throughout the land"; also, "A pure white soap made from vegetable oils and free from all acids, alkalis, animal fats, or any other harmful substance." In respondent's said catalogues there is stated, at the instance of respondent, that "This well known brand of soap is made from pure vegetable oils and is free from all animal fats, free alkali, or any other harmful substances." And in a circular circulated by respondent to its customers and prospective customers respondent has caused to be printed and circulated the statement concerning this soap that "It is guaranteed to be absolutely free from all acids, strong alkali, animal fats, or any other harmful substances, and is clean and sweet enough to be eaten." Whereas, in truth and in fact, said soap does contain free fatty acids, is not antiseptic to any greater extent than any other soap of similar quality; and, since it contains considerable quantities of free acid and of unsaponified matter, it is not a toilet soap of a high grade, nor is it endorsed by eminent physicians throughout the land, neither does said soap contain medicaments prescribed by competent medical authority.

2. Respondent has manufactured and sold and does manufacture and sell a brand of ordinary unmedicated soap as aforesaid under the trade name and brand of "Dr. Hood's Cuticle Soap." Upon the carton or container in which each cake of said soap is packed there appears said trade name or brand, and in addition thereto, is printed the statement, "Removes tan, pimples, etc. An ideal skin tonic. Cleansing, soothing and healing." In respondent's catalogue there is printed and circulated, at the instance of respondent, to respondent's customers and prospective customers the statement that this soap is "Medicated according to the latest knowledge of antiseptics." Whereas, in truth and in fact, said soap did not remove tan nor pimples to any greater extent than any ordinary soap, nor was said soap medicated according to the latest knowledge of antiseptics, nor medicated at all, nor was it a high grade toilet soap, since it contained considerable quantities of unsaponified and an appreciable amount of water-insoluble matter.

(*d*) Such names, brands, labels, and statements in circulars are false and misleading and have a tendency and capacity to injure competitors and to mislead and deceive purchasers and the general public into the belief that said soaps above described contain medicaments prescribed by competent medical authority and are made respectively by or according to the formulas of physicians or surgeons and possess curative and healing qualities not possessed by other soaps of like kinds.

PAR. 5. In the course of its said business respondent has manufactured and sold in interstate commerce certain lines of ordinary unmedicated soaps, and has named, labeled, branded, and advertised said soaps as follows:

(*a*) "White Wonder Soap." Upon the carton or container in which each cake of said soap is packed and sold appears the printed statement, "Manufactured only by U. S. Medical Association."

(*b*) "Nature's Vegetable Soap." Upon the carton or container in which each cake of said soap is packed and sold appears the printed statement, "Manufactured only by U. S. Medical Association."

(*c*) "Hot Springs Sulphurine Cream Soap." Upon the carton or container in which each cake of said soap is packed and sold appears the printed statement, "Manufactured for National Medical Association."

(*d*) "Cutamulsion." Upon the carton or container in which each cake of soap is packed and sold appears the printed statement, "Distributed exclusively by the National Medical Association."

(*e*) In truth and in fact neither said "White Wonder Soap" nor said "Nature's Vegetable Soap" is or has been manufactured by U. S. Medical Association, nor has U. S. Medical Association or any other medical association had anything whatever to do with the manufacture, distribution, or sale of said soaps. Neither said "Hot Springs Sulphurine Cream Soap" nor said "Cutamulsion" is or has been manufactured by or for, nor distributed by, National Medical Association, nor has National Medical Association or any other medical association had anything whatever to do with the manufacture, distribution, or sale of said soaps.

(*f*) Such names, labels, brands, and advertisements are false and misleading, and have the tendency and capacity to injure competitors and mislead and deceive purchasers and the general public into the belief that said soaps above described and named, labeled, and advertised as aforesaid, were made and approved by national associations of physicians and are medicated and possess curative and healing properties not possessed by other soaps of like kind.

PAR. 6. Respondent, in its catalogues and other literature as aforesaid offers to manufacture for dealer-customers soaps denominated by respondent as "private brands." Under said designation the respondent offers to its trade certain soaps put out under names chosen by dealers and stamped upon said soap, and have stamped upon the boxes, labels, and containers in which said soaps are packed such statements and representations as the dealer may request. Respondent has put out such private brands under various names in connection, in some cases at least, with false and misleading statements upon the boxes, wrappers, and containers in which said soaps are packed:

(*a*) "Dr. Tangway's Skin Soap." Upon the carton or container in which each cake of said soap was packed there appeared the following printed statement: "Dr. Tangway's Skin Soap." "Most lasting and refined of all cleansing preparations. This preparation is superior to any other for both toilet and nursery." "Crocodile Medicine Company."

(*b*) Such a trade name, label, brand, and advertisement are false and misleading and when used by respondent as above described have the tendency and capacity to injure competitors and to mislead purchasers and the general public into the belief that said soap above described was prepared by certain medical authorities, and was made by or according to the formula of a physician or surgeon and possessed healing and curative properties not possessed by other soaps of like kind and quality.

PAR. 7. No Dr. Williams, Dr. Hood, nor Dr. Tangway has been in any way connected with respondent since 1903, if ever, nor has any soap manufactured and sold since that time by respondent been prepared according to a formula furnished by any Dr. Williams, Dr. Hood, or Dr. Tangway, nor by any other physician or surgeon.

PAR. 8. Respondent, since the filing of the complaint in this proceeding, has modified or changed, in some respects, statements printed upon cartons, boxes, or containers, and in catalogues or circulars as above set forth. Some of said changes are as follows:

(*a*) Upon new cartons respondent has planned to place in lieu of "U. S. Medical Association" or "National Medical Association" "Nature's Products Company" as a trade name in the sale of "White Wonder Soap," "Nature's Vegetable Soap," "Hot Springs Sulphurine Cream Soap," and "Cutamulsion," but at the time of the hearings in this proceeding was selling such soap in the containers then on hand as theretofore labeled.

(*b*) "Dr. Tangway's Skin Soap," a "private brand" prepared at the instance of a customer, was not being sold at the time of said hearing.

(*c*) Some changes were also made in the wording of literature relating to "Dr. Williams Antiseptic Soap" and "Dr. Hood's Cuticle Soap," such as eliminating the statement, "Medicated according to the latest knowledge of antiseptics."

CONCLUSION.

That the acts, practices, and activities of respondent as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a 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 respondent, the testimony and documentary evidence offered and received, and the arguments of counsel for the respective parties hereto, and the Commission having made its findings and conclusion that the 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,"

Therefore, it is now ordered, That the respondent, Williams Soap Company, a corporation organized under and existing by virtue of the laws of the State of Indiana, its officers, directors, agents, servants and employes, do cease and desist:

(1) From placing upon cartons, boxes, or containers in which its said soap is sold in interstate commerce, or in its circulars, price lists, catalogues, or other literature in which said soap is listed, described, or advertised for sale in interstate commerce, any trade name or brand containing the term "Dr." or "Doctor," or any other term having the capacity or tendency to indicate to purchasers or prospective purchasers of said soap or to mislead or deceive them into the belief that said soap had been manufactured after a formula or after formulas prepared by a physician or surgeon, when, in fact, said soap had not been so manufactured.

(2) From placing upon cartons, boxes, or containers in which its said soap is sold in interstate commerce, or in its circulars, price lists, catalogues, or other literature in which said soap is listed, described, or advertised for sale in interstate commerce, the trade names or designations "U. S. Medical Association," or "National Medical Association" or other similar trade name or designation having the capacity and tendency to indicate to purchasers and prospective purchasers, or to mislead or deceive them into the belief that such soap had been manufactured and sold under the authority and sanction of organized bodies of physicians or surgeons, or other medical authority, when said soap, in fact, had not been so manufactured and sold.

(3) From placing upon cartons, boxes, or containers in which its said soap is sold in interstate commerce, or in its circulars, price lists, catalogues, or other literature in which said soap is listed, described, or advertised for sale in interstate commerce, either in the form of trade names, brands, designations, or otherwise, the words "medicated" or "antiseptic," or other similar term or terms, having the capacity and tendency to indicate to purchasers or prospective purchasers, or to mislead or deceive them into the belief that such soap had been medicated, or had antiseptic qualities not possessed by other similar soaps made and sold by other manufacturers in interstate commerce, when in fact said soap of respondent has not been so medicated, and had not and has not such antiseptic qualities.

(4) From placing upon cartons, boxes, or containers in which its said soap is sold in interstate commerce, or in circulars, price lists, catalogues, or other literature in which said soap is listed, described, or advertised for sale in interstate commerce, the statement that said soap is "free from all fatty acids," when in fact such soap is not free from all fatty acids.

It is further ordered, That respondent, within sixty (60) days after the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth, to which report should be attached copies of all cartons, containers, catalogues, price lists, circulars, and labels prepared and distributed by said respondent to the trade in interstate commerce.

FEDERAL TRADE COMMISSION

v.

SIGNET FILMS, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 936—April 30, 1923.

SYLLABUS.

Where a corporation engaged in the business of selling and leasing motion pictures and photoplays,

(a) Purchased, retitled, reissued and exploited a photo play theretofore issued and exploited, without stating or indicating in the advertising matter supplied to exhibitors and distributors for use in offering the picture to the public, that the film was a reissue; and

(b) Represented the same in its contracts of lease as a first run picture;

With the effect of misleading exhibitors and their patrons into believing the same to be a new picture and with a capacity and tendency to secure the lease and public patronage thereof in that belief, and with the intent so to do:

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

COMPLAINT.

Acting in the public interest 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 charges that Signet Films, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in voliation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent is a corporation organized under the laws of the State of New York, with principal office and place of business in the city of New York, in said State. It is engaged in the business of supplying to the owners and operators of moving-picture theatres the positive films of photoplays and moving pictures for exhibition in their respective theatres. Said positive films are hereinafter called films, and said owners and operators of moving-picture theatres are hereinafter called exhibitors. The respondent as a distributor procures the films supplied by it to the exhibitors from various individuals, partnerships, and corporations engaged in the business of producing theatrical entertainments and photoplays recorded upon photographic negative films, and of thereafter making or granting to others the right to make films adapted for use in motion picture projecting machines, and of leasing and granting to distributors and exhibitors the right to exhibit said theatrical productions and photoplays to the public. Said persons, partnerships, and corporations engaged in the business of producing photoplays, as above set forth, are hereinafter called producers. The respondent herein in the regular course of business, after receiving from the producers the negative and positive films, causes positive films to be made from the negative films and transported from its place of business in New York into and through other States of the United States and the District of Columbia to the aforesaid exhibitors at the points where their several theatres are located. In the course and conduct of its said business, respondent herein continuously has been and now is in competition with other individuals, partnerships, and corporations similarly engaged in the business as distributors of positive films.

PAR. 2. The said respondent, as well as other distributors of photoplays, at times secures positive films of photoplays from various producers, and supplies same to exhibitors as aforesaid, which said films have theretofore been exhibited to the public and upon being again so exhibited were and are known to the trade as reissued films, and do not have the commercial value of a film of a new photoplay.

PAR. 3. Some time in 1915 the Intermotion Film Corporation produced a photoplay entitled "The Decoy," which was leased to the Mutual Film Exchange for a number of months and was widely distributed by that exchange under that title. During the year 1920 the negative film of this photoplay was purchased for the respondent herein by one Neff Nagem, at that time secretary and treasurer of said respondent, and on or about November 1, 1920, said respondent began, and for some months thereafter continued, the distribution of positive films of this photoplay to exhibitors thereof throughout the several States, as set forth in the foregoing paragraph, under the title "The Faithless Sex," without disclosing to the exhibitors that said film was a reproduction and a reissue of the old photoplay "The Decoy." The said respondent supplied each exhibitor, along with the film, certain bills, posters, and other advertising matter in which the said photoplay was advertised as "The Faithless Sex," said advertising matter containing no notice or statement disclosing to the readers thereof that said photoplay was a reproduction or reissue of the old photoplay "The Decoy," but on the contrary the said advertising was worded and designed in a manner calculated to mislead and deceive the theatre-going public into the belief that said photoplay was a new or different photoplay.

PAR. 4. There are a considerable number of distributors of films of only new photoplays. There are also many distributors of reissued films of photoplays who do not rename said photoplays and distribute them as films of a new photoplay, or in any manner indicate to the theatre-going public that said old reissued films are films of a new photoplay.

PAR. 5. The above acts and things done by respondent had the capacity and tendency of misleading and deceiving the aforesaid exhibitors and the public throughout a large portion of the United States into the belief that the said photoplay, "The Faithless Sex," distributed and exhibited as above set forth, was a new photoplay, and to induce the exhibitors to purchase said photoplay and the public to patronize the exhibition of said photoplay in that belief.

PAR. 6. The above alleged acts and things done by 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.

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 respondent, Signet Films, Inc., charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, Signet Films, Inc., having filed its answer, the case was duly set down for hearing before an examiner of the Federal Trade Commission and the respondent and its attorney were duly notified thereof, but respondent failing to appear either by its attorney or otherwise, evidence was introduced in support of the complaint and respondent by its attorney has filed a written waiver of any right to introduce evidence or to present the case to the Commission by brief or oral argument, and has stated that it has no objection to offer to the issuance of an order herein.

And thereupon this cause came on for final hearing upon the complaint and the answer thereto, the evidence introduced and the report of the trial examiner, 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 conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Signet Films, Inc., is and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York, State of New York, and engaged in and throughout the various States and Territories of the United States in the business of distributing, leasing, and selling motion pictures and photoplays to owners and operators of motion picture theatres (hereinafter called exhibitors) for exhibition to the public, and is similarly engaged in distributing motion pictures and photoplays to persons, partnerships, and corporations (hereinafter called state-righters) for limited redistribution to exhibitors within specified territories. In the conduct of such business respondent is now and at all times hereinafter mentioned was in competition with other persons, partnerships, and corporations similarly engaged in the business of distributing, leasing, and selling motion pictures and photoplays.

PAR. 2. In distributing to exhibitors and state-righters its motion pictures, respondent's method of doing business is as follows: It purchases or leases from motion picture producers or owners negative films and positive photographic prints of motion pictures and photoplays, and makes or has made for it from negative films purchased or leased from motion picture producers positive photographic prints of motion pictures and photoplays, which prints it arranges and packs in such manner as to be adapted for use in motion picture projecting machines. These positive photographic prints are hereinafter mentioned simply as prints. Such prints are shipped from respondent's aforesaid place of business in the city of New York to exhibitors in the States of New York and New Jersey, and state-righters in various States throughout the United States, who in turn deliver them to exhibitors for presentation to the public. The motion pictures and photoplays thus furnished for exhibition are known to the trade as and are hereinafter called releases. In the instances in which the prints are distributed by respondent itself to the exhibitors there are contracts of lease executed between the exhibitors and the respondent, by the terms and provisions of which respondent undertakes to supply prints of certain named releases to the exhibitors, together with the right to exhibit them for a stated period in consideration of a stipulated sum which the exhibitors agree to pay.

PAR. 3. When a motion picture or photoplay has run the usual course of exploitation and exhibition generally throughout the United States, or any considerable portion thereof, for one or more theatrical seasons and the demand therefor and/or exploitation thereof has practically ceased, so that the picture has for a substantial length of time no appreciable amount of exhibition in motion picture theatres generally throughout the United States or any considerable portion thereof; then, if a new exploitation of such picture is made by the producer or a distributor, during a subsequent theatrical season, together with a fresh complement of advertising matter, in an effort to lease to exhibitors new or old prints of the photographic negative of such former production of scenes of action, the act of the producer or distributor in so doing is commonly and generally known and designated by the trade and the public as the reissue of the picture. When a new title is given to a picture upon its reissue, as above described, it is the well established and generally accepted and practiced custom and usage of competitors of said respondent to append a statement to the main titles, on the films, and in the advertising and publicity matter, and in the contracts of lease to exhibitors, that the picture is a reissue or revival of a picture of a stated title.

PAR. 4. Some time prior to 1915 the motion picture entitled "The Decoy" was released in the city of New York by a producer of motion pictures or photoplays, known as Filmotion Company of America or American Filmotion Company. The negative film was leased to the Mutual Film Corporation, a distributor of motion picture film, having its main office in New York City and operating twenty-eight (28) exchanges or branch offices in important distributing centers throughout the United States. From the negative film, a large number of prints were made and widely distributed by the Mutual Film Corporation and, during such distribution, the picture was actively exploited and advertised and extensively exhibited throughout the entire United States, and, by reason of their long and frequent usage and general exhibition to the public, the negative films and prints became scratched, marred, torn, or otherwise mechanically injured and lost the novelty and clearness which they had originally possessed. Demand for the picture ceased and the term of the lease having expired, the negative film and eleven (11) prints thereof were returned to the producer.

PAR. 5. During the year 1920 the aforementioned producer sold the negative film of the above mentioned picture, entitled "The Decoy," and eleven (11) prints thereof, as an old or second-hand picture, to N. Nagem, who at the time of the sale was secretary and treasurer of respondent. On or about November 1, 1920, the respondent renamed the old picture "The Faithless Sex" and reissued it and continued its distribution throughout the United States, in some instances directly to exhibitors and in some instances to state-righters, who distributed it to exhibitors who exhibited it in their theatres at various points located in several different States, without disclosing to the exhibitors thereof that the picture was a reproduction or reissue of the old photoplay "The Decoy."

PAR. 6. The contracts of lease under which respondent furnished this picture did not disclose that the picture was a reissue, but represented that it was a first-run picture.

PAR. 7. The respondent supplied each exhibitor and state-righter, along with the prints which were sent them, certain posters for advertising purposes in which the photoplay was advertised as "The Faithless Sex." Said advertising matter, so furnished by respondent, and used by both respondent and said state-righters in offering said picture to exhibitors, and used by the exhibitors, in turn, in advertising such picture to the public, contained no notice or statement which would in any manner indicate to readers thereof that the picture was a reproduction or reissue of a picture which had been formerly released and exhibited to the public as "The Decoy."

PAR. 8. The acts and conduct of respondent in so offering and holding out its said reissued picture to the trade and general public as aforesaid, caused exhibitors and exhibitors' patrons in the States where it was shown to believe that the picture was a new or different picture or photoplay, and such acts and conduct in so offering and holding out its said reissued picture as aforesaid were intended and designed and had the capacity and tendency to mislead and deceive exhibitors and the theatre-going public in various States in the United States into the belief that the reissued picture or photoplay was a new or different picture or photoplay and to induce exhibitors to lease said photoplay and the public to patronize the exhibition of said photoplay in that belief.

CONCLUSION.

That the methods and practices set forth in the foregoing findings as to the facts and each and all thereof, under the circumstances therein set forth, constitute unfair 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 pleadings, the testimony and evidence received by an examiner duly appointed by the Commission, and the report of said examiner upon the facts; and the respondent having failed to appear at the time and place set for the hearing and having by its attorney duly waived the right to introduce testimony in opposition to the complaint or to present the matter to the Commission by brief or 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, Signet Films, Inc., its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly advertising, selling, or leasing, or offering to sell or lease, reissued motion picture photoplays under titles other than those under which such photoplays were originally issued and exhibited, unless the former titles of such photoplays and the fact that they theretofore have been exhibited under such former titles, be clearly, definitely, distinctly, and unmistakably stated and set forth, both in the photoplay itself and in any and all advertising matter used in connection therewith in letters and type equal in size and prominence to those used in displaying the new titles.

And it is further ordered, That the respondent, Signet Films, Inc., shall file with the Commission, within thirty (30) days from the date of service upon it of a copy of this order, its report in writing stating the manner and form in which it has complied with this order.

FEDERAL TRADE COMMISSION
v.
HENRY LEDERER & BROS., INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 946—April 30, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture of fountain pens and pencils, which were sold by it at wholesale at $1.50, each, and resold at retail at prices ranging from $2 to $2.50 and $1 to $1.25, marked the pens with a price mark of $10, and the pencils with a price mark of $5; the fact being that such pretended prices did not represent the contemplated retail prices of said articles, but were fictitious prices used for the purpose and with the effect of misleading and deceiving the purchasing public and inducing the purchase thereof as special bargains when offered at substantially lower figures, and enabling unscrupulous dealers to misrepresent the same, and with the tendency and capacity to enable dealers to obtain therefor prices higher than justified by their grade and quality and by free and open competition:

Held, That such mislabeling, or misrepresentation of price, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that Henry Lederer & Bros., Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Rhode Island and having its main office and principal place of business in the city of Providence in said State. It is now and at all times hereinafter mentioned has been engaged in the manufacture of novelties, knives, jewelry, pens, and pencils, and the sale thereof to jobbers and retailers throughout the United States, causing the products so manufactured and sold by it to be transported to the purchasers thereof from its said place of business in the State of Rhode Island, through and into various other States of the United States, in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 herein, respondent sells, and for more than one year last past has sold, fountain pens and pencils manufactured by it, upon which it places labels, conspicuously displaying excessive proposed resale price marks, which price marks are not the real or actual prices at which such fountain pens and pencils are resold, or may be expected to be resold to the purchasing public, but, on the contrary, are, and are known to respondent to be false, exorbitant, and fictitious prices, far in excess of the true value of the fountain pens and pencils, and of the prices at which such fountain pens and pencils are actually sold to the ultimate purchaser in the usual course of trade; that among the false, fictitious, and misleading prices so marked by respondent on its products are the following: Fountain pens which it sells at wholesale for $1 each, and which are sold at retail at prices varying from $2 to $2.50, respondent marks "$10.00"; pencils which it sells at wholesale at 50 cents each and which are sold at retail at prices varying from $1 to $1.25, respondent marks "$5.00"; that the fountain pens and pencils, so marked, are sold by respondent with the expectation that such marks are to be used for the purpose of misleading and deceiving the purchasing public, by inducing the public to purchase such pens and pencils, when offered for sale at prices substantially below those printed on such labels, upon the mistaken belief that such pens and pencils are being sold at a greatly reduced price.

PAR. 3. There are a considerable number of manufacturers of fountain pens and pencils who do not mark their products with false, fictitious, or misleading price marks, such as used by respondent, and who do not aid or abet dealers in misrepresenting such products to the public.

PAR. 4. The above alleged acts and things done by respondent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, Henry Lederer & Bros., Inc., 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, but made no answer, 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 and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission, having duly considered the record and being now fully advised in the premises, makes this its report stating its finding as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Rhode Island and having its main office and principal place of business in the city of Providence in said State. It is now and at all times hereinafter mentioned has been engaged in the manufacture of novelties, knives, jewelry, pens, and pencils, and the sale thereof to jobbers and retailers throughout the United States, causing the products so manufactured and sold by it to be transported to the purchasers thereof from its said place of business in the State of Rhode Island, through and into various other States of the United States, in direct and active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. For more than one year prior to the issuance of the complaint herein, respondent, in the regular course and conduct of its business as above described, sold fountain pens and pencils manufactured by it, and labeled same conspicuously with excessive proposed resale price marks. Fountain pens which it sold at wholesale for $1 each and which were resold by the retail trade at prices varying from $2 to $2.50 respondent labeled with the price mark of $10. Pencils which it sold at wholesale at 50 cents each, and which were resold at retail prices varying from $1 to $1.25 it marked with a price mark of $5.

PAR. 3. The price marks placed by respondent on its pens and pencils as aforesaid, were not the real or actual prices at which such fountain pens and pencils were resold, or were expected to be resold to the consuming public, and were known to the respondent to be false, fictitious, and exorbitant, and to be greatly in excess of the true value of such fountain pens and pencils, and to be in excess of the prices at which such fountain pens and pencils were actually sold to ultimate purchasers thereof in the usual course of trade.

PAR. 4. Fountain pens and pencils, marked with such fictitious prices, were sold by respondent with the expectation that such marks would be used for the purpose of misleading and deceiving the purchasing public, by inducing the public to purchase such pens and pencils, when offered for sale at prices substantially below those printed on such labels, upon the mistaken belief that such pens and pencils were being sold at a greatly reduced price; and the practice by respondent of labeling fountain pens and pencils with such fictitious marks did mislead and deceive a substantial portion of the purchasing public by inducing them to believe that the retail price of such fountain pens and pencils was the price marked thereon, and that when they were procured at less prices, the purchaser was securing a special bargain.

PAR. 5. The sale by respondent of fountain pens and pencils marked with fictitious and exaggerated prices as aforesaid, enabled unscrupulous dealers to misrepresent same in reselling to customers, and further had the general tendency and capacity of enabling dealers to obtain for such pens and pencils higher prices than those justified by the grade and quality thereof, and by free and open competition.

PAR. 6. There are a considerable number of manufacturers of fountain pens and pencils who do not mark their products with false, fictitious, and misleading price marks, such as those used by respondent, and who do not aid or abet dealers in misrepresenting such products to the public.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint and a stipulation of facts entered into on behalf of the Commission and the respondent, in which stipulation of facts respondent waived its right to presentation of 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 the respondent, Henry Lederer & Bros., Inc., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly—

1. Stamping, branding, labeling, or otherwise marking fountain pens and pencils sold or intended to be sold by it with fictitious, exaggerated, or misleading prices, known to be in excess of the prices at which such pens and pencils are intended to be and usually are sold at retail;

2. Selling or supplying its customers with fountain pens and pencils on which are stamped, branded, labeled, or otherwise marked, fictitious, exaggerated, or misleading prices, known to be in excess of the prices at which such pens and pencils are intended to be and usually are sold at retail.

Respondent is further ordered, To file a report in writing with the Commission thirty (30) days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

OLD DOMINION OIL CO. ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 861—May 4, 1923.

SYLLABUS.

Where four oil corporations, professedly independent, but secretly operated as a business unit, and individuals either responsible for or connected with their promotion and organization; in pushing the sale of their stock, and with the effect of aiding therein,

(a) Misrepresented, by advertisements and otherwise, the organization, production, nature, extent, and location of the leases, assets, resources, business progress, good will and prospects of said corporations;

(b) Represented that all funds derived from the sale of stock would be devoted to developing the properties of the several companies; the fact being that under the agreements entered into prior to their promotion, one third of said funds was appropriated by the aforesaid individuals, and another third devoted to the payment of said individuals' salaries and the payment of stock-selling and office expenses;

(c) Paid extravagant pretended dividends, although at no time did the corporations possess sufficient funds derived from sources from which dividends could properly be paid;

(d) Following a merger, continued and largely advertised the payment of pretended dividends, and sold some of the corporations' most valuable properties at a sacrifice in order so to do; thereby inducing the purchase of large amounts of stock; and

(e) Thereafter, for the purpose of stimulating the sale of stock, promised that a dividend would be paid on a day certain, widely advertised the promised payment, and urged everyone immediately to buy all they could; as prospects of the company were never so bright, its stock would be withdrawn from sale in the near future at a date certain, etc.; the fact being that all of said statements were false and the company was totally insolvent:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Old Dominion Oil Company, Great Western Oil Company, Bethlehem Oil Company, Metropolitan Oil Company, O. L. Pardue, A. B. Pardue, J. H. West, J. L. Stout, H. J. Gingles, W. B. Young, and J. D. Towner, hereinafter referred to as the respondents, have been and are using unfair methods of competition, 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, O. L. Pardue, A. B. Pardue, J. H. West, J. L. Stout, H. J. Gingles, and W. B. Young, are residents of the State of Texas, each having his office and principal place of business in the city of Houston, in said State; and that respondent, J. D. Towner, is a resident of the State of Tennessee, having his office and principal place of business at Memphis, in said State.

PAR. 2. That the respondent, O. L. Pardue, during the year 1919 promoted and caused to be organized the following respondent corporations to wit: The Old Dominion Oil Company, Great Western Oil Company, the Bethlehem Oil Company, and the Metropolitan Oil Company, each of which ever since has been and now is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas;

That in the organization and promotion of said companies and in the advertisement and offer for sale of stock therein, as well as in its actual sale and distribution to purchasers thereof or subscribers therefor in the various States of the United States, there were associated with respondent O. L. Pardue, respondents J. H. West and other persons in connection with respondent Old Dominion Oil Company; respondents H. J. Gingles and J. L. Stout in connection with respondent Great Western Oil Company; respondent J. L. Stout and other persons in connection with the respondent the Bethlehem Oil Company; respondents A. B. Pardue, H. J. Gingles, and other persons in connection with the respondent the Metropolitan Oil Company;

That the said individual respondents since the organization of said companies have conducted and manipulated the property and affairs of each and all of them as one business unit, and at all times hereinafter mentioned said companies have been and were so conducted by respondents, in conjunction with each other, and under the direction and control of respondent, O. L. Pardue; and they failed to disclose to the purchasing public the intimate relations existing between them and each of them, but represented such companies as separate and independent organizations.

PAR. 3. That each of the said respondent corporations had authorized capital stock of three hundred and fifty thousand dollars, all of which immediately after their several organizations was issued to the individual respondents mentioned in paragraph 2 as particularly associated with the promotion of each corporate respondent, in consideration of the transfer to it or them, of oil leases on certain lands, which were of doubtful or no value, and thereafter each of said individual respondents returned said stock to the corporate treasuries of said respondent companies, under an agreement that they and each of them would pay to said individual respondents and assignors of said stock one-third of the proceeds derived from its sale, and apply one-third to the development of the various oil lands and leases, the remaining one-third to be devoted to payment of salaries and the expenses incident to the sale by respondents of the stock of the several companies.

PAR. 4. That the said respondents so associated as described in paragraph 2, on behalf of, in conjunction with, and under the direction and control of respondent O. L. Pardue, in conducting the business of promoting and organizing the said oil companies with which they and each of them have been or were severally identified as aforesaid, have caused to be transported through the mails and otherwise large quantities of letters, circulars, and advertising matter into and through the various States and Territories of the United States, and have procured subscriptions for and sold stock in all of said companies, to many persons, partnerships, and corporations throughout the United States, and have transported or caused to be transported the particular stock sold as aforesaid in the specific company or companies in the promotion and organization of which they and each of them have been or were participating as hereinbefore set forth; from the city of Houston, in the State of Texas, to the purchasers thereof in the various other States in the United States, and in direct competition with other persons, copartnerships, and corporations engaged in the sale and distribution of stocks and securities.

PAR. 5. That the respondent, O. L. Pardue, for himself and the said respondent companies, and while acting as a promoter and organizer thereof, and the respondents A. B. Pardue, J. H. West, J. L. Stout, H. J. Gingles, W. B. Young, and J. D. Towner, each for himself and associated as aforesaid, in conjunction with, on behalf and under the direction and control of respondent O. L. Pardue, and in connection with the particular company or companies with which each of them has been or was identified as described in paragraph 2 hereof, 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, business progress, good will, and prospects of the various companies aforesaid and of the standing, ability, and integrity of O. L. Pardue, and for such purpose the respondents so associated in respect to the said companies as hereinbefore indicated, more particularly represented, advertised, published, and circulated the following statements and representations, by means of which they and each of them have sold much of the stock of said companies in and through the various States and Territories of the United States, to wit:

That well No. 1 of the Old Dominion Oil Company in Block 818 in Northwest Extension Burkburnett was brought in February 14, 1920, with a production of 800 barrels per day;

That well No. 2 of said company was brought in May 6, 1920, with a production of 700 barrels per day;

That well No. 3 was brought in April 28, 1920, with a production of 1,200 barrels per day;

That the Old Dominion Oil Company controlled thirty acres in the heart of the biggest gushers in the Northwest Extension of Burkburnett;

That wells of the Old Dominion Oil Company, Nos. 1, 2, and 3, at Breckenridge were producing 1,000 barrels of oil daily and well No. 4 was producing 780 barrels of oil daily;

That the Old Dominion Oil Company enjoyed production from nine wells, on account of which it was receiving more than $100,000 per month;

That on May 1, 1920, the respondent the Great Western Oil Company brought in a big well which produced 1,000 barrels of oil per day and had secured another tract of about ten acres in the heart of gusher territory, Northwest Extension of Burkburnett;

That the respondent, the Bethlehem Oil Company, had one of the biggest gushers in the Breckenridge field producing 1,200 barrels of oil daily and enjoyed production sufficient for payment of big dividends;

That the respondent, Metropolitan Oil Company, had extensive production from its wells at Breckenridge;

That the leases and other holdings of the respondent, Metropolitan Oil Company, at Blue Ridge were in the very heart of such field;

That all funds derived from the sale of stock would be devoted to development of the properties of the several respondent companies;

That the gross proceeds from oil and other sales would be devoted to payment of dividends;

PAR. 6. That the production of said wells Nos. 1, 2, and 3 of the respondent, Old Dominion Oil Company, in the Northwest Extension of Burkburnett was grossly exaggerated and the said respondent was entitled to less than one-fourth thereof;

That the thirty acres controlled by said respondent instead of being located in the heart of the biggest gushers in the Northwest Extension of Burkburnett was situated in an undeveloped area southwest of the proven territory in said field;

That said respondent was only entitled to one twenty-fourth of the production from wells Nos. 1, 2, 3, and 4 at Breckenridge; and its maximum returns during the brief period of production enjoyed by it was $30,000 per month instead of $100,000;

That respondent, Great Western Oil Company, grossly exaggerated the production from its so-called big well in Northwest Extension of Burkburnett and its ten-acre tract instead of being in the heart of gusher-producing territory was located entirely outside of the proven area;

That respondent, Bethlehem Oil Company, was entitled only to one twenty-fourth of the production from its so-called big gusher at Breckenridge, which was the identical well advertised by respondent, Old Dominion Oil Company, as its "gusher";

That respondent, Metropolitan Oil Company, instead of possessing extensive production from its well at Breckenridge was entitled only to one twenty-fourth of the production therefrom and its leases and other holdings at Blue Ridge were located on the edge of such field and beyond the vicinity of any production at all;

That by reason of the agreement under which the corporate respondents acquired their treasury stock from the individual respondents no more than one-third of the proceeds from its sale could be applied to the operation or development of their respective properties or leases;

That the moneys from time to time distributed among shareholders by respondents and called by them dividends were the gross proceeds from sales of various producing and other properties of said corporate respondents, on the strength of whose ownership respondents had been able to advertise and sell their stock;

That at no time during the promotion of said companies or any of them, or while their stock was offered and sold, or thereafter was the production derived by respondent companies from the said wells or any of them sufficient to warrant payment of a dividend by them or either or any of them;

That said individual respondents, under the direction and control of respondent, O. L. Pardue, while engaged, as aforesaid, in the advertisement and sale of stock in the various companies, by and through the representations specified in paragraph 5 hereof, particularly those relating to the ownership of producing wells and leases in proven areas, were also engaged in the sale or other disposition of any and all of the several properties of the said corporate respondents, from which money might be realized, or which contributed any element of value to their various stocks; and neither they nor any or either of them disclosed to the public or any portion thereof that they, the said individual respondents, were appropriating to themselves the greater portion of proceeds from sale of said stocks, and depleting the resources and impairing the capital of said companies and each of them, by sale of their only valuable holdings in order to obtain funds for the so-called dividends.

PAR. 7. That in the promotion and organization of said respondent companies, neither the respondent, O. L. Pardue, 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, O. L. Pardue, and the other respondents, to unload on the said companies certain oil leases owned by them at greatly excessive and fictitious prices; and the affairs of said companies were at all times conducted in the interest and for the benefit of the respondent, O. L. Pardue, 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.

PAR. 8. That the natural and probable tendency of each and all of the said representations so made to the public by respondents, in procuring subscriptions for and selling stock in said companies was, and they and each of them were, calculated to induce subscriptions for and purchase of said stocks, and many persons in various States of the United States to whom such representations or some one or more of them were made as aforesaid by respondents, believed them to be true, or some one or more of them, and relying thereon and because thereof, purchased a considerable amount of shares in said companies, or in one or more of them.

PAR. 9. That by reason of the facts recited, the respondents have been and are using an unfair method 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.

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 Old Dominion Oil Company, the Great Western Oil Company, the Bethlehem Oil Company, the Metropolitan Oil Company, O. L. Pardue, A. B. Pardue, J. H. West, J. L. Stout, H. J. Gingles, W. B. Young, and J. D. Towner, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answers and the respondents, Old Dominion Oil Company, Great Western Oil Company, Bethlehem Oil Company, Metropolitan Oil Company, O. L. Pardue, A. B. Pardue, J. D. Towner, and J. H. West, having entered their appearances by their attorneys, Messrs. Hunt and Teagle and J. E. Price, respectively, and the respondents, H. J. Gingles and W. B. Young, having appeared in person, and respondent, J. L. Stout, having appeared neither in person nor by attorney, hearing was had before George McCorkle, an examiner of the Commission theretofore duly appointed, and testimony being introduced in behalf of the Commission and on behalf of the respondents, and the examiner having made his report upon the facts, and the attorney for the Commission having filed exceptions thereto, and having filed a brief, and the issues herein having been presented to the Commission for final consideration and determination,

The Federal Trade Commission having fully considered the record herein, and being fully advised in the premises, now makes its report and findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

Paragraph 1. That respondents, O. L. Pardue, A. B. Pardue, J. H. West, J. L. Stout, H. J. Gingles, and W. B. Young, are residents of the State of Texas, each having his office and place of business in the city of Houston in said State. Respondent J. D. Towner is a resident of the State of Tennessee, having his office and principal place of business in Memphis in said State.

Par. 2. That O. L. Pardue, respondent, during the year 1919, promoted and caused to be organized the following respondent corporations, to wit: The Old Dominión Oil Company, the Great Western Oil Company, the Bethlehem Oil Company, and the Metropolitan Oil Company, each of which is a corporation organized and existing and doing business under and by virtue of the laws of the State of Texas.

That in the promotion of said companies, the sale and offering for sale, through advertisements and otherwise, of stock in same as well as its actual sale and distribution to purchasers thereof or subscribers therefor in the various States of the United States, there were associated with respondent O. L. Pardue, respondent J. H. West and others in connection with the respondent Old Dominion Oil Company; in connection with the respondent Great Western Oil Company, H. J. Gingles and J. L. Stout; in connection with the respondent Bethlehem Oil Company, respondents J. D. Towner, J. L. Stout, and other persons; and in the organization and promotion of the Metropolitan Oil Company there were associated with O. L. Pardue respondents H. J. Gingles and A. B. Pardue.

The said respondents, since the organization of the said companies, have conducted them as one business unit with interlocking directorates and officials of one corporation were and have been officials of the other corporations so that they have been and were at all times so conducted by respondents, and [were] all of them, under the direction and control of respondent O. L. Pardue. This intimate business relation that existed between the several companies was never advertised but it was held out to the public that said companies were separate and entirely independent of each other.

PAR. 3. Each of the said respondent companies had an authorized capital stock of $350,000 all of which, after their several organizations, was issued to the individual respondents above mentioned as particularly associated with the promotion of each corporate respondent in consideration of the transfer to it or them of oil leases on certain lands which were of uncertain value and thereafter each of the individual respondents returned said stock to the corporate treasury of the respondent companies under an agreement that each of said corporate respondents would pay to said individual respondents, or assignors of the said stock, one-third of the proceeds derived from its sale and apply one-third to the development of the various oil lands and leases, and the remaining one-third to be devoted to the payment of the salaries and expenses incident to the sale by respondents of the stock of the several respondent companies.

PAR. 4. The said respondents, so associated and in conjunction with and under the direction of O. L. Pardue in promoting and organizing the said oil companies with which they and each of them were and have been identified, have caused to be distributed through the mail and otherwise, large quantities of letters, circulars, and advertising matter into and through the various States and Territories of the United States and have procured subscriptions for and sold stock in all of said companies to many persons, partnerships, and corporations throughout the various States of the United States and have transported the said stock as aforesaid in the specific companies in the promotion and organization of which they, and each of them, have been and were participating and as hereinbefore set forth, from the city of Houston in the said State of Texas to the purchasers thereof in the various other States of the United States in direct competition with other persons, partnerships, and corporations engaged in the sale and distribution of stock and securities.

PAR. 5. That the respondent, O. L. Pardue, for himself and the respondent companies, and A. B. Pardue, J. H. West, H. J. Gingles, W. B. Young, and J. D. Towner, each for himself and associated as aforesaid, and in conjunction with and under the direction of the respondent O. L. Pardue and in connection with the particular company or companies with which each of them was and has been identified, have deceived and defrauded the public, particularly that part thereof who have purchased or contracted to purchase stock in said companies or any of them, by means of false and misleading advertisements, false representations and false and misleading statements and reports regarding the organization, assets, resources, business progress, good will and prospects of the various companies aforesaid, and for such purpose represented, advertised, and circulated the following statements and representations by means of which they and each of them sold much of the stock of said companies in and through the various States and Territories of the United States, to wit:

1. That wells Nos. 1, 2, and 3 of the Old Dominion Oil Company were brought in with an initial production of 2,700 barrels per day, whereas in truth the total production of oil received by the Old Dominion Oil Company from said wells during the entire time of their activity amounted to only 2,759.75 barrels, such time covering period from March, 1920, to August 7, 1920.

2. That the Old Dominion Oil Company controlled thirty acres in the heart of the biggest gushers in the Northwest Extension of Burkburnett, whereas in truth and in fact the said acreage was southwest of the proven territory in said Burkburnett oil field.

3. That wells Nos. 1, 2 and 3 of the Old Dominion Oil Company in the Breckenridge oil field were producing 1,000 barrels of oil daily and well No. 4 was producing 780 barrels of oil per day when

the facts were that at the time of this representation, to wit, the fall of 1920, the Old Dominion Oil Company was entitled to only one twenty-fourth interest in the production of said wells, which interest during the brief period of their operation amounted to but 12,395 barrels, which was much less than the amount claimed.

4. That on May 1, 1920, the Great Western Oil Company brought in a large well which produced 1,000 barrels of oil per day and the said company had secured another tract of about 10 acres in the heart of the gusher territory of the Northwest Extension of Burkburnett, whereas in truth the total production of said well during its entire period of activity, covering a period from May to August, 1920, was only 926.69 barrels and the Great Western Oil Company was entitled to only one-fourth of said production and the advertised statement that it, the said Great Western Oil Company, had secured another tract of about 10 acres in the heart of the gusher territory of the Northwest Extension of Burkburnett, was also untrue as the said tract was in Block 69, Northwest Extension of Burkburnett on which several dry holes had been drilled and the said acreage was definitely outside of the so-called gusher territory.

5. That the respondent, Bethlehem Oil Company, had one of the largest oil gushers in the Breckenridge oil field, producing 1,200 barrels daily, which was sufficient to pay big dividends, when in fact and in truth the Bethlehem Oil Company possessed only one twenty-fourth interest in the production of its so-called big gusher at Breckenridge and this fact was not disclosed to that part of the public purchasing, or contracting to purchase the stock of the said company by or in its literature or advertising matter.

6. That all funds derived from the sale of stock would be devoted to the development of the properties of the several companies—placed to the drilling fund—and used for drilling oil wells on said companies' leases, whereas in truth the advertisements, circulars, and other printed matter distributed throughout the various States of the United States in connection with the sale of stock of the several respondent companies failed to disclose the fact that O. L. Pardue and other individual respondents, except J. L. Stout, were appropriating to themselves one-third of the proceeds from the sale of stock of the several companies. Another one-third of said proceeds was being used to pay the salaries of the respondents, their office and stock-selling expenses, leaving but one-third of the proceeds from the sale of said stock to be devoted to the development of the property and other interests of the stockholders.

PAR. 6. That during the promotion and operation of the several companies and as a stimulus to the sale of the stock, respondents paid out extravagant dividends, so-called, to the stockholders, when as a fact at no time did the several companies possess sufficient funds derived from the sale of oil or other sources to warrant the payment of any genuine dividend.

PAR. 7. The Bethlehem Oil Company and the Great Western Oil Company merged into the Old Dominion Oil Company with a capitalization of one million shares of the par value of $1 each, and a few days thereafter another oil company known as the General Production Company also merged into the Old Dominion Oil Company, making its capitalization two million dollars, and the payment of so-called dividends continued and the stockholders, exclusive of the respondent stockholders, received four 10 per cent dividends during the year 1921, and in order to secure sufficient funds with which to pay said so-called dividends which were largely advertised throughout the country and much stock sold by reason thereof, the receipts from the sale of oil not being sufficient, leases and other property holdings were sold by respondent—in some instances the most valuable assets of the company, as was the case in the sale of the lease of the Old Dominion Oil Company, known as the Hale 80 in the Breckenridge oil district, for which respondent had paid the sum of $150,000 and on which eight wells of average production in that district were in opèration at the time of its disposal by respondents. This property was sold at a loss as were various other leases of the respondents which were sacrificed to meet the so-called dividends promised to stockholders and prospective purchasers to accelerate the sale of stock of the consolidated companies. After the sale of said Hale lease the money received from the sale of oil by the respondents from all sources during its entire operation thereafter was hardly sufficient to meet current expenses of the company; the total amount received by months being as follows:

March, 1921	$2,793.62	October, 1921	--------
April, 1921	2,364.24	November, 1921	--------
May, 1921	3,982.10	December, 1921	$681.66
June, 1921	728.75	January, 1922	--------
July, 1921	694.62	February, 1922	--------
August, 1921	--------	March, 1922	--------
September, 1921	--------	April, 1922	--------

PAR. 8. While receiving no amount from the sale of oil in the year of 1922, yet a dividend was promised stockholders and prospective purchasers of stock to be paid on the 10th day of March following, and same was strenuously advertised throughout the country and everyone was urged to buy stock in the Old Dominion Oil Company, to buy at once, to buy all they could, that the business prospects of said company were never so bright, that the Old

Dominion Oil Company was then one of the leading oil companies of the State of Texas; that its stock would be for sale only until midnight of the 25th of March, after which it could not be purchased at any price, all of which was untrue and false, as no dividend was paid by the Old Dominion Oil Company on March 10 or at any other time afterwards, its stock was not withdrawn from market at midnight of the 25th of March and the Old Dominion Oil Company had no money or other assets with which to pay a dividend of any amount. The company was $72,000 in debt and had but a thousand dollars in bank, and was totally insolvent, the logical result of its unsound financial inception and operation.

PAR. 9. A last call was sent out by respondent O. L. Pardue for the Old Dominion Oil Company on April 5 to stockholders requesting a 5 per cent assessment on their stock to save their investment, which call was not responded to by the stockholders, and a few days later the Old Dominion Oil Company was merged by O. L. Pardue and a few others holding a majority of the stock into another company, known as the Revere Oil Company, wherein they were permitted to exchange their Old Dominion stock for an equal amount of stock in the Revere Company provided they purchased 25 per cent additional stock of the Revere Oil Company.

PAR. 10. Out of the total amount of capitalization of the several companies, namely, $2,000,000, the sum of $1,290,000 worth of stock was sold, one-third of which, $430,000, approximately, went to the respondents as promoters; a similar amount to them for salaries, office expenses, and expenses of stock selling, and the balance was used in behalf of the stockholders in the speculative undertaking of drilling for oil on the companies' leases. Approximately $430,000, derived from production of oil and from sales of leases or interests therein, were paid to stockholders as so-called dividends.

PAR. 11. That no testimony was adduced connecting J. L. Stout with the promotion or sale of stock of any of the respondent companies or aiding and assisting therein.

CONCLUSION.

That the practices of respondents, except J. L. Stout, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce and constitute a 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 pleadings and the testimony and evidence received by an examiner of the Commission 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, O. L. Pardue, A. B. Pardue, J. H. West, H. J. Gingles, W. B. Young, and J. D. Towner, as officers, shareholders, or agents of the respondents, Old Dominion Oil Company, Great Western Oil Company, Bethlehem Oil Company, and Metropolitan Oil Company, and as officers, shareholders, or agents of any other corporation, association, or partnership, and respondents, O. L. Pardue, A. B. Pardue, J. H. West, H. J. Gingles, W. B. Young, and J. D. Towner, and the said respondents, Old Dominion Oil Company, Great Western Oil Company, Bethlehem Oil Company, and Metropolitan Oil Company, their officers, agents, and trustees, do cease and desist from directly or indirectly—

1. Publishing, circulating or distributing, or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statements or representations to the effect that the property or operation of any corporation, association or partnership is in proven oil territory or any other false or misleading statements or representations concerning the promotion, organization, character, history, resources, assets, oil production, earnings, income, dividends, progress or prospect of any corporation, association, or partnership.

2. *It is ordered*, That this proceeding against J. L. Stout be dismissed.

3. *It is further ordered*, That the respondents, O. L. Pardue, A. B. Pardue, J. H. West, H. J. Gingles, W. B. Young, and J. D. Towner, within sixty (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 with the order of the Commission herein set forth.

36727°—25—VOL 6——11

FEDERAL TRADE COMMISSION
v.
JOSEPH KAHN, JACOB FRANK, AND JEROME FRANK, PARTNERS, STYLING THEMSELVES AS KAHN & FRANK.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 682—May 12, 1923.

SYLLABUS.

Where a firm engaged in the sale of hosiery at wholesale in competition with concerns which either correctly branded, labeled, and advertised their products with reference to composition or failed to brand, label, and advertise the same at all in that respect; sold hosiery composed of cotton and of an animal or vegetable fibre, but containing no silk, branded or labeled "Ladies' Silk Boot Hose" or "Ladies' Art Silk Hose," respectively; thereby misleading a substantial part of the purchasing public into believing that all except the top, heel, toe, and possibly the sole, of the former, and all of the latter, were composed of silk:

Held, That the sale of goods branded or labeled as above set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Joseph Kahn, Jacob Frank, and Jerome Frank, partners, styling themselves Kahn & Frank, hereinafter referred to as respondents, have been and are using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That respondents constitute a partnership and carry on business at New York, N. Y., under the firm name and style of Kahn & Frank, and are engaged in the business of selling hosiery at wholesale, causing hosiery sold by them to be transported to the purchasers thereof from the State of New York, through and into other States of the United States, and carry on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondents in the course of their business as described in paragraph 1 hereof, sell hosiery made of cotton and artificial silk, but which contains no genuine silk, which hosiery and the boxes in which such hosiery are offered for sale to the purchasing public by the retail dealer, have placed thereon false and deceptive labels, among which are the following: "Ladies' Silk Boot Hose" and "Ladies' Art Silk Hose"; which labels are false and misleading and are calculated to and do mislead and deceive the purchasing public.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method 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.

REPORT, MODIFIED 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, Joseph Kahn, Jacob Frank, and Jerome Frank, partners, styling themselves as Kahn & Frank, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having entered their appearance in their own proper person and filed their answer herein, admitting all the allegations of the complaint and each count and paragraph thereof, and having made, executed, and filed an agreed statement of facts, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade 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.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Joseph Kahn, Jacob Frank, and Jerome Frank, constitute a partnership and carry on business at New York, N. Y., under the firm name and style of Kahn & Frank.

PAR. 2. That the respondents are engaged in the business of selling at wholesale in the State of New York and in other States of the United States, hosiery, and in causing the same to be shipped and transported from the State of New York, through and into other States of the United States, pursuant to such sales, in competition with other individuals, copartnerships, and corporations engaged in similar commerce between and among the States of the United States, and that there has been and is continuously a current of trade to and from said respondents in said hosiery among and between the States of the United States.

PAR. 3. That the respondents in the course of their business, as described in paragraph 2 above, prior to the commencement of this proceeding by the Federal Trade Commission, sold and shipped hosiery made of cotton and an animal or vegetable fibre, and containing no true silk, in packages or containers labeled and branded "Ladies' Silk Boot Hose." That dealers purchasing this hosiery from respondents or from respondents' customers labeled and branded, or in packages or containers labeled and branded as aforesaid, offer and sell it so labeled and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled or branded with any other word or words to indicate the character, kind, or grade of material entering into the manufacture of said hosiery.

PAR. 4. That the respondents in the course of their business, as described in paragraph 2 above, prior to the commencement of this proceeding by the Federal Trade Commission, sold and shipped hosiery made of cotton and an animal or vegetable fibre, and containing no true silk, labeled and branded and in packages or containers labeled and branded "Ladies' Art Silk Hose." That dealers purchasing this hosiery from respondents or from respondents' customers labeled and branded, or in packages or containers labeled and branded as aforesaid, offer and sell it so labeled and branded to the general purchasing public. That neither the said hosiery nor the packages containing it were labeled or branded with any other word or words to indicate the character, kind, or grade of material entering into the manufacture of said hosiery.

PAR. 5. That the term "Silk Boot Hose" when applied to hosiery signifies to the unskilled buying public hosiery of which the top, heel, and toe, and possibly the sole, are composed of material different from that of which the other portion of the hosiery is made and that the said hosiery is, except as to top, heel, toe, and possibly the sole, composed of silk produced from the cocoon of the silkworm. That the term "Art Silk Hose" when applied to hosiery signifies to the unskilled buying public hosiery which is entirely composed of silk produced from the cocoon of the silkworm.

Par. 6. That many of respondents' competitors in the sale of hosiery in interstate commerce sell and ship in interstate commerce, hosiery, the top, toe, and heel of which is made of cotton and the other part is made of silk produced from the cocoon of the silkworm, which hosiery and the packages or containers in which the same is marketed are labeled or branded and advertised as "Silk Boot Hose." That many of such competitors sell and ship in interstate commerce hosiery made entirely of silk produced from the cocoon of the silkworm, which hosiery and the packages or containers in which it is marketed are labeled or branded and advertised as "Silk Hose."

Par. 7. That many of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery which is made of an animal or vegetable fibre, and containing no true silk, and cotton, which hosiery and the packages or containers of which are labeled, advertised, and branded with no word or words descriptive of the material or materials entering into the manufacture of said hosiery. That many of respondents' competitors, engaged in interstate commerce as aforesaid, have sold and shipped, and now sell and ship, hosiery, which is made of an animal or vegetable fibre, and containing no true silk, and cotton, which hosiery and the packages or containers of which are labeled, advertised, and branded with the words "Artificial Silk and Cotton" or "Fibre Silk and Cotton."

Par. 8. The labels or brands under which the respondents sell and ship hosiery, as set forth in the foregoing findings, tend to and do mislead and deceive a substantial part of the purchasing public as to the composition and materials of said hosiery; said labels or brands, as so used by respondents, cause said hosiery to compete unfairly with the goods of their competitors in interstate commerce, who, as set forth in paragraphs 6 and 7 above, sell hosiery made entirely of silk, or hosiery made wholly or in part of other materials than those named, and labeled or branded so as to indicate the true composition thereof, or not labeled, or branded by any words descriptive of the composition thereof.

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described 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."

MODIFIED 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 modified statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its modified findings as to the facts with its conclusion, that the 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, Joseph Kahn, Jacob Frank, and Jerome Frank, partners, styling themselves as Kahn & Frank, and their officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly labelling or branding hosiery sold by them or the containers in which the same are marketed, with the words "Art Silk" and from labelling or branding hosiery sold by them or the containers in which the same are marketed with the words "Silk Boot" unless such hosiery so labelled or branded or in the containers so labelled or branded is composed except as to the top, toe, heel, and sole thereof, of silk produced from the cocoon of the silk worm.

FEDERAL TRADE COMMISSION

v.

ROYAL DUKE OIL CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 789—May 15, 1923.

SYLLABUS.

Where a concern organized for the purpose of acquiring and operating oil and gas leases; in advertising the sale of its stock,

(*a*) Made numerous false and misleading statements concerning the location, extent or nature, value and prospects of its holdings or rights, and concerning its plans and future, and general business condition; and

(*b*) Represented to purchasers of its stock that the same was worth above par and requested them to give it an option thereon for repurchase at an increase of 25 per cent above its par value, when as a matter of fact it was insolvent and had no oil production, and thereby attached a fictitious value to said stock in order to accelerate the purchase thereof by its stockholders and others;

With the result that the public was misled and deceived and numerous persons were induced to purchase such stock:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Royal Duke Oil Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a joint stock association, operating under a declaration of trust, dated January 15, 1919, and recorded in the deed records of Tarrant County, Tex., with principal place of business at Fort Worth, Tex.; the authorized capital stock of said respondent was originally $100,000, which was later increased to $250,000, then to $500,000, and again to $5,000,000, divided into 5,000,000 shares of the par value of $1 each.

PAR. 2. That the respondent was organized for the purpose of acquiring oil and gas leases on lands and the drilling of wells thereon, and immediately after its organization it inaugurated an advertising campaign with a view of selling its stock to the public throughout the United States, and as a result thereof respondent sold shares of its stock upon mail orders direct to the purchasers thereof, or through agents which sold such stock on commission to numerous purchasers throughout various places in the United States, and respondent caused certificates of such stock, when sold, to be transported to the purchasers thereof from the State of Texas through and into other States of the United States, and in the sale of such stock was in direct, active competition with other corporations and joint stock associations similarly engaged.

PAR. 3. That respondent, in the course of its sale of stock, as described in paragraph 2 hereof, made use of advertisements which were published in newspapers of general circulation throughout the United States, and circulars, circular letters, and other advertising matter which were given general circulation throughout the United States by respondent, which advertisements and advertising matter contained numerous false and deceptive statements of and concerning the business and properties of respondent and the value of its stock, which statements were calculated to and did mislead and deceive the public, and numerous persons were thereby induced to purchase the said stock; that among such false and deceptive statements were statements to the effect that the value of the assets of the company had been doubled by the acquisition of 4,000 acres in San Saba County, Tex., whereas such acreage was of no value, and the lands included therein were in unproven territory; the further statement was made that respondent "owned eleven different tracts of land," the locations and areas of such tracts being given in such statements, whereas respondents did not own any of said lands, but had only a leasehold interest in parts of said lands, which interest was subject to forfeiture for failure to carry out the terms of the leases, and as to other portions of said lands respondent had only an interest therein which entitled it to drill for oil thereon at its own expense and receive one-half of any oil produced; that certain tracts covered by said leases were described in said advertisements and advertising matter as proven acreage, although no oil was produced therefrom, and such lands were not within any productive area, and drilling thereon had been abandoned by respondent; that numerous other statements of like false and deceptive nature were contained in said advertisements and advertising matter.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method 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.

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, Royal Duke Oil Company, 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 by its trustees, and filed its answer herein, hearings were had before an examiner of the Commission theretofore duly appointed, due notice of the time and place of holding said hearings having been given respondent, and testimony and evidence introduced in support of the allegations of the said complaint. No evidence having been offered on behalf of respondent, the hearings were duly closed, and the testimony so taken was reduced to writing and filed, together with the other evidence, in the office of the Commission.

And thereupon this proceeding came on regularly for final determination by the Commission, and the Commission having duly considered the entire record, and now being fully 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 respondent, Royal Duke Oil Company, is an association operating under a declaration of trust dated January 15, 1919, and recorded on the official records of Tarrant County, State of Texas, and has its principal place of business at Fort Worth in said State. The authorized capital stock of respondent company was originally $100,000, which amount was increased to $250,000, and later to $500,000, and later still to 5,000,000 shares of the par value of $1 each. T. A. Hilburn and B. L. Hilburn were president and secretary, respectively, and also trustees of respondent company.

PAR. 2. The respondent was organized for the purpose of acquiring oil and gas leases on lands and developing same by drilling oil wells thereon, and after its organization respondent inaugurated an advertising campaign to sell its stock to the public throughout the various States of the United States, and did sell its stock by mail orders, direct to the purchasers thereof and through agents at various places in the United States, and respondent caused certificates of the stock so sold to be transmitted to the purchasers thereof, from the city of Fort Worth, in the State of Texas, through said State into other States of the United States, and [in] engaging in the sale of its said stock was in direct, active competition with other corporations, partnerships, and associations engaged in the sale of stock and similar securities.

PAR. 3. That respondent, in the course of the sale of its stock as described in paragraph 2 hereof, made use of advertisements which were published in newspapers of general circulation throughout the United States, particularly the Daily Oklahoman, published in Oklahoma City, State of Oklahoma; the Salt Lake Tribune, of Salt Lake, Utah; the Cincinnati Enquirer, and other newspapers, and of circulars, letters, and other advertising matter which were given circulation throughout the United States by respondent, which advertisements and other published matter contained false and deceptive statements of and concerning the business and property of respondent and the value of its stock. Said statements were calculated to, and did, mislead and deceive the public, and numerous persons were induced thereby to purchase stock in respondent company. Among the false and misleading statements generally advertised by the respondent were the following:

1. That the assets of respondent company had been doubled by the acquisition of 4,000 acres of land in San Saba County, Tex. Whereas, in truth and in fact the said lands were of no value as oil producing lands. San Saba County was condemned territory, and respondent's 6/8 interest in said acreage was conditioned upon a drilling operation on respondent's part which was partially carried out and then abandoned, at a loss to respondent of $175,000.

2. That respondent "owned 11 different tracts of land," giving the locations and boundaries of same, whereas, in fact, respondent did not own any of said tracts, but had only a leasehold interest in some, and in other tracts only a so-called drilling interest. Respondent had only a 7/16 interest in the Hanks well, the only substantial asset it possessed, and the interest of the respondent had coupled with it also an agreement to drill a well on the said lease; in the 2½ acres in the Hardin tract respondent had only a 7/24 interest, the White Star Oil Company and the O-Tex Company owning the other interests. Respondent had only a drilling interest in the 30 acres at Leeray, Eastland County, Tex., which was 4/8 of any oil produced on the land at respondent's expense from the first well, the expense of any other wells to be drilled on the land to be equally divided. So with respondent's interest in the 50 acres in Block 4, H. & T. C. R. R. Survey, Eastland County, and the 4,000 acres in San Saba County, Tex. A drilling agreement as to the interest of respondent in each of said tracts was the only ground of respondent's claim in the land.

PAR. 4. The following advertised statements of the respondent company, made after the loss of the Hanks well, which was respondent's only dependable asset, as to its financial condition, its assets and policy, were untrue, and were calculated, had the capacity and tendency to and did mislead and deceive purchasers of respondent's stock:

1. That respondent company was "never in so good a condition, except for lack of immediate drilling funds," when, as a fact, the only producing well that respondent company had beside the Hanks well was the well in the Funderberg Survey, known as the Smith No. 1, from which the respondent had derived a total of only $6,600, and the said well had been abandoned by respondent.

2. That respondent would "drill only in territory that had been proven to be productive of oil," whereas, in truth, respondent's drilling operations were largely in unproven or so-called "wild-cat" territory. Six wells drilled by respondent out of a total of eight were dry wells, or nonproductive; that respondent's operations on the San Saba lease, where respondent lost $175,000, were in condemned territory, and so considered prior to respondent's adventure therein; likewise, respondent's operations in Cotton County, Okla., and on the Van Cleave tract in Block 103 in Burkburnett.

3. That respondent's stock was worth above par, and stockholders were requested to give respondent an option on same, to be purchased on or before May, 1921, at an increase of 25 per cent above its par value; whereas, in truth, respondent was then insolvent, had no oil production, and was by this means attaching a fictitious value to its said stock; in order to accelerate its purchase by its stockholders and other purchasers.

CONCLUSION.

The practices of respondent, under the conditions and circumstances described in the foregoing findings of fact are unfair methods of competition in interstate commerce, and constitute a 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 pleadings and the testimony and the evidence received by an examiner of the Commission, 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, Royal Duke Oil Company, its officers, agents, and trustees, do cease and desist from directly or indirectly—

Making or causing to be made in any manner whatsoever in selling in interstate commerce, or in promoting and furthering in interstate commerce the sale of stock or other securities of Royal Duke Oil Company or any other trust, association, or corporation, any false or misleading statement or misrepresentation to the effect that the property or operation of Royal Duke Oil Company or of any such other trust, association, or corporation is in proven oil territory; or making or causing to be made in like manner any other false or misleading statement or misrepresentation concerning the promotion, organization, character, history, resources, assets, production, earnings, income, dividends, progress, or prospects of Royal Duke Oil Company or of any such other trust, association, or corporation.

It is further ordered, That the respondent, Royal Duke Oil Company, within sixty (60) days from the date of the service of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with the order of the Commission herein above set forth.

FEDERAL TRADE COMMISSION

v.

JACK BERNSTEIN, DOING BUSINESS AS UNITED WOOLEN MILLS OF WASHINGTON.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 926—May 15, 1923.

SYLLABUS.

Where an individual engaged at Washington in the manufacture and sale of men's clothing, but neither owning, operating, nor interested in any mill or mills manufacturing woolen cloth, and with no direct connection therewith,

(*a*) Adopted and used, as a trade name for one of his stores, the name "United Woolen Mills of Washington"; and

(*b*) Advertised that he had direct mill connection;

With a tendency and capacity to mislead and deceive the purchasing public into the belief that in buying of him it was dealing with a chain of stores and was buying directly from the manufacturer of the cloth, and saving jobbers' and middlemen's profits; and thereby to secure their patronage:

Held, That such misleading adoption and use of trade name, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest 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 charges that Jack Bernstein, doing business as United Woolen Mills of Washington, hereinafter referred to as respondent, has been, and is, using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Jack Bernstein, is now, and for the past seven years has been, engaged in the business of manufacturing and selling men's clothing under his own name at 814 F Street NW., in the city of Washington and District of Columbia. Some time during the year 1921 respondent opened another store at 816 F Street NW., under the name of United Woolen Mills of Washington, where he conducted a business similar to that hereinbefore mentioned. In the conduct of the two businesses hereinbefore described, respondent is, and has been, in competition with other persons, partnerships, and corporations engaged in similar business in the District of Columbia.

PAR. 2. Under the name of United Woolen Mills of Washington, respondent has advertised, during the year last past, in the newspapers of general circulation throughout the District of Columbia to the effect respondent was a manufacturer of cloth from which it made custom-made clothes and that respondent had direct mill connections, when as a matter of fact respondent neither owned, operated, nor had any interest in any woolen mill.

PAR. 3. The use by respondent of the trade name "United Woolen Mills of Washington" is calculated to and has the capacity and tendency to mislead and deceive the purchasing public into the belief that respondent owns and operates, or has an interest in, mills which manufacture the woolens from which respondent's clothing is made, and that persons buying from respondent are buying directly from the manufacturer of the cloth, thereby saving the profits of middlemen, etc., when as a matter of fact respondent neither owns, operates, nor has any interest in, any mill manufacturing woolen cloth.

PAR. 4. Among other concerns in competition with the respondent are the "United Woolen Mills," a nationally known corporation engaged in the same business as respondent, organized and existing under the laws of the State of West Virginia, and which concern has been engaged in said business for a great number of years and owns and operates many branch stores. By reason of the above, the use by the respondent of the name "United Woolen Mills of Washington" is calculated to and has the capacity and tendency to mislead and deceive the purchasing public into the belief that they are dealing with the United Woolen Mills, a West Virginia corporation.

The above alleged acts are each and 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.

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, Jack Bernstein, doing business under the name of "United Woolen Mills of Washington," charging him with violation of Section 5 of said Act.

Respondent having entered his appearance and filed his answer herein, together with a stipulation as to the facts in support of the allegations of said complaint, agreeing among other things that the Commission may proceed to make its findings, conclusions, and order without further notice of proceedings, and this matter having come regularly on to be heard and having been duly considered, the Commission, being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

Paragraph 1. Respondent, Jack Bernstein, is now, and for several years last past has been, engaged in the business of manufacturing and selling men's clothing under his own name at 814 F Street NW., in the city of Washington, District of Columbia. During the year 1921 respondent opened another store under the name of "United Woolen Mills of Washington," where he conducts a business similar to the one hereinbefore mentioned. In the conduct of the two such businesses, respondent is and has been in competition with other persons, partnerships, and corporations, similarly engaged in business in the District of Columbia who do not use the word "Mills" as a part of their trade name.

Par. 2. Respondent does not now own, operate, or have an interest, nor has he ever owned, operated, or had an interest in any mill or mills manufacturing woolen cloth, and the use by respondent of the trade name "United Woolen Mills of Washington" is false and misleading and has both the tendency and capacity to mislead and deceive the purchasing public of the city of Washington, District of Columbia, into the belief that respondent owns, operates, or has an interest in or is connected with a mill or mills manufacturing woolen cloth, and the use of the said trade name has a further tendency and capacity to induce the general purchasing public of the city of Washington, District of Columbia, to purchase the clothing tailored by respondent under the belief that by buying from respondent it is buying direct from the manufacturer of the cloth from which the clothing is made, thereby saving the profits of certain middlemen and jobbers.

Par. 3. Respondent, on November 15, 1921, advertised in the Washington Herald, a newspaper of general circulation throughout the District of Columbia, to the effect that said respondent had "direct mill connection," when in truth and in fact respondent has never had, nor has he now, direct connection with any mill or mills manufacturing woolen cloth, and the statements contained in the said advertisements had the tendency and capacity to mislead and deceive the general purchasing public into the belief that respondent had "direct mill connection" and to induce it to purchase said goods of respondent upon such belief so created.

PAR. 4. The use by respondent of the name "United Woolen Mills of Washington" has the tendency and capacity to mislead and deceive the purchasing public of the city of Washington, District of Columbia, into the belief that by purchasing from respondent it is dealing with one of a chain consisting of two or more stores engaged in the same business and under the same general ownership and control, when in truth and in fact respondent has not now, nor has he had, any connection with any chain of stores under the same management and control.

CONCLUSION.

The use by respondent of the name "United Woolen Mills of Washington," under the circumstances above set out, is an unfair method of competition within the meaning 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 thereto, and a stipulation as to the facts filed herein, the Commission having made its findings as to the facts and its conclusion that the respondent has 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 now therefore ordered, That the respondent, Jack Bernstein, doing business under the name and style of "United Woolen Mills of Washington," do cease and desist from using the word "Mills" as a part of the firm name or style of business in any manner whatsoever and/or advertising, representing, or indicating that he owns, operates, or has a connection with a mill manufacturing woolen cloth unless or until as a matter of fact respondent owns or operates such mill.

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

FEDERAL TRADE COMMISSION
v.
G. F. HEMLER.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1001—May 15, 1923.

SYLLABUS.

Where it had been long known that cigars manufactured at Tampa, Fla., were largely composed of tobacco imported from Havana, Cuba, and such cigars had come to be widely and favorably known and generally referred to as "Tampa Cigars"; and thereafter an individual engaged elsewhere in the manufacture and sale of cigars made from other than Havana tobacco, placed on certain brands of his cigars bands bearing the words "Tampa, Florida," and on the paper lining of the boxes containing the same, the words "All Havana Hand Made," with the effect of misleading and deceiving a substantial part of the purchasing public and to the injury of competing manufacturers of genuine Tampa cigars who so labeled, branded and advertised their product:

Held, That such misbranding and mislabeling, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that G. F. Hemler, sometimes doing business under the name and style of The Star Cigar Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is engaged at McSherrystown, in the State of Pennsylvania, in the business of manufacturing and selling cigars, and causes such cigars when sold to be transported from the State of Pennsylvania through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. In the course of said business carried on by him, as aforesaid, respondent has made a practice of placing on certain brands of cigars manufactured by him at McSherrystown, in the State of Pennsylvania, bands bearing the words "Tampa Florida," and on the paper lining of the boxes containing said cigars has placed the words "All Havana Hand Made." Cigars have for many years been manufactured in the city of Tampa, Florida, and in the territory immedi-

PAR. 4. The use by respondent of the name "United Woolen Mills of Washington" has the tendency and capacity to mislead and deceive the purchasing public of the city of Washington, District of Columbia, into the belief that by purchasing from respondent it is dealing with one of a chain consisting of two or more stores engaged in the same business and under the same general ownership and control, when in truth and in fact respondent has not now, nor has he had, any connection with any chain of stores under the same management and control.

CONCLUSION.

The use by respondent of the name "United Woolen Mills of Washington," under the circumstances above set out, is an unfair method of competition within the meaning 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 thereto, and a stipulation as to the facts filed herein, the Commission having made its findings as to the facts and its conclusion that the respondent has 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 now therefore ordered, That the respondent, Jack Bernstein, doing business under the name and style of "United Woolen Mills of Washington," do cease and desist from using the word "Mills" as a part of the firm name or style of business in any manner whatsoever and/or advertising, representing, or indicating that he owns, operates, or has a connection with a mill manufacturing woolen cloth unless or until as a matter of fact respondent owns or operates such mill.

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

FEDERAL TRADE COMMISSION
v.
G. F. HEMLER.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1001—May 15, 1923.

SYLLABUS.

Where it had been long known that cigars manufactured at Tampa, Fla., were largely composed of tobacco imported from Havana, Cuba, and such cigars had come to be widely and favorably known and generally referred to as "Tampa Cigars"; and thereafter an individual engaged elsewhere in the manufacture and sale of cigars made from other than Havana tobacco, placed on certain brands of his cigars bands bearing the words "Tampa, Florida," and on the paper lining of the boxes containing the same, the words "All Havana Hand Made," with the effect of misleading and deceiving a substantial part of the purchasing public and to the injury of competing manufacturers of genuine Tampa cigars who so labeled, branded and advertised their product:

Held, That such misbranding and mislabeling, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that G. F. Hemler, sometimes doing business under the name and style of The Star Cigar Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is engaged at McSherrystown, in the State of Pennsylvania, in the business of manufacturing and selling cigars, and causes such cigars when sold to be transported from the State of Pennsylvania through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. In the course of said business carried on by him, as aforesaid, respondent has made a practice of placing on certain brands of cigars manufactured by him at McSherrystown, in the State of Pennsylvania, bands bearing the words "Tampa Florida," and on the paper lining of the boxes containing said cigars has placed the words "All Havana Hand Made." Cigars have for many years been manufactured in the city of Tampa, Florida, and in the territory immediately surrounding said city and known as the Tampa District. Such cigars have been and are manufactured principally from tobacco imported from Havana, Cuba, and generally known as Havana tobacco, and cigars made in said city and district have acquired a wide and favorable reputation and are generally considered to be the best cigars manufactured of Havana tobacco, with the exception of those made at Havana, Cuba, by reason of similarity of climate and labor conditions.

PAR. 3. The cigars manufactured by respondent upon which said brands and labels have been and are placed by him, as aforesaid, were not manufactured at the city of Tampa, Florida, or in the Tampa District, aforesaid, and were not made of Havana tobacco, and the use of said brands and labels was intended to and did indicate and signify to the purchasing public that said cigars had in fact been manufactured at Tampa, Florida, or in the Tampa District, and were composed of Havana tobacco.

PAR. 4. The words " Tampa Florida " on the bands of said cigars and the words "All Havana Hand Made " on the containers thereof have been and are understood by a substantial part of the purchasing public to mean cigars manufactured in the city of Tampa or in the said Tampa District in the State of Florida and composed of tobacco imported from Havana, Cuba, and said brands and labels have the capacity and tendency to mislead and deceive the purchasing public into the belief that said cigars so branded and labeled were in fact Tampa cigars as such term is generally understood and were manufactured from Havana tobacco, and to induce them to purchase the same in that belief.

PAR. 5. The above 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.

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, G. F. Hemler, charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The 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 and 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, without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is engaged in the business of manufacturing and selling cigars at McSherrystown, in the State of Pennsylvania, and causes such cigars, when sold, to be transported from the State of Pennsylvania through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged in commerce.

PAR. 2. That in the course of said business carried on by him, as aforesaid, respondent has made a practice of placing on certain brands of cigars manufactured by him at McSherrystown, in the State of Pennsylvania, bands bearing the words "Tampa, Florida," and on the paper lining of the boxes containing said cigars has placed the words "All Havana Hand Made."

PAR. 3. That for more than thirty years cigars have been manufactured in the City of Tampa, Florida, and in the territory immediately surrounding said city and known as the Tampa District; that such cigars are known and referred to as Tampa Cigars and are manufactured principally from tobacco imported from Havana, Cuba; and that such cigars made in said City and District of Tampa have acquired a wide and favorable reputation.

PAR. 4. That the cigars manufactured and sold by respondent, upon which the bands, labels, and legends described in paragraph 2 hereof have been and are placed by him, were not made in the City of Tampa or in the Tampa District, so called, in the State of Florida, nor composed of tobacco grown in and imported from Havana, Cuba.

PAR. 5. That the words "Tampa, Florida," on the bands of said cigars and the words "All Havana Hand Made" on the containers thereof have been and are understood by a substantial part of the purchasing public to mean cigars manufactured in the City of Tampa, or in the said Tampa District, in the State of Florida, and to be composed of tobacco imported from Havana, Cuba.

PAR. 6. That many of respondent's competitors are engaged in the manufacture and sale of cigars to persons in States other than those in which their principal factories and places of business are located, and in causing such cigars to be transported from the States in which their principal factories or places of business are located through and into other States of the United States, pursuant to such manufacture and sales. That many of respondent's competitors have manufactured, sold, and shipped and are now manufacturing, selling, and shipping, in said commerce between the States of the United States, cigars which are manufactured in the City of Tampa, or the

Tampa District, in the State of Florida, and principally from tobacco imported from Havana, Cuba, which cigars and the containers thereof bear labels, brands, and advertising matter containing the word "Tampa," alone or in connection with other words and phrases.

PAR. 7. That the bands, labels, and legends containing the words "Tampa, Florida," and the words "All Havana Hand Made" used by the respondent upon cigars and the containers thereof manufactured, sold, and shipped by him, as set forth in the foregoing findings, have the capacity and tendency to and do mislead and deceive a substantial part of the purchasing public into the belief that such cigars are manufactured in the City of Tampa, or the Tampa District, in the State of Florida, and are composed of tobacco grown in and imported from Havana, Cuba.

CONCLUSION.

The practices of the 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 the respondent and agreed statement of facts filed herein, 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, G. F. Hemler, his agents, representatives, servants, and employees, do cease and desist from using the words "Tampa, Florida," and the words "All Havana Hand Made," or any of them, in bands, labels, or legends on cigars and the containers thereof manufactured by him in McSherrystown, Pa., or in any other place than the City of Tampa, or the Tampa District, in the State of Florida, or sold by him, if such cigars in fact are not made in the City of Tampa, or the Tampa District, in the State of Florida, and are not composed of tobacco grown in and/or imported from Havana, Cuba.

It is further ordered, That the respondent, G. F. Hemler, shall, within sixty (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.

FEDERAL TRADE COMMISSION

v.

MELHUISH & COMPANY ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 872—May 17, 1923.

SYLLABUS.

Where a corporation, individuals responsible for the organization and management thereof and officers therein, and a firm engaged as fiscal agents of said corporation; jointly and severally, in promoting the sale of said corporation's stock, and as a part of a campaign directed to that end,

(a) Made false and misleading statements in advertising and offering said stock, in that they

(1) Featured the alleged earnings of the corporation's refinery or refineries, their capacities and business, and their enlargement from time to time, the fact being that earnings from said refineries were at no time sufficient for the payment of dividends in any amount, that one of said refineries was "nothing but an aggregation of junk to which no one had any claim or title," and that no enlargements were made at any time in the three refineries owned in whole or part by said corporation;

(2) Featured the steady payment of monthly dividends and also the payment of extra stock and cash dividends, the fact being that during said dividend period the corporation with an income of approximately $20,000 properly available for the payment of dividends paid out as pretended dividends approximately $183,000;

(3) Exaggerated and magnified production from its holdings, and its net earnings;

(4) Misrepresented the location and character of its holdings; and

(5) Falsely represented that it was engaged in the complete cycle of the oil industry, to wit, "producing, refining, and marketing," and that the net earnings from each were so considerably in excess of dividend requirements on outstanding stock as to give that element of safety of investment which every investor should seek;

(b) Agreed to, and did, pay, during the period covered by the contract with its fiscal agents, a pretended dividend of 2 per cent of the par value of its stock each month, notwithstanding the fact that during said period funds were not properly available therefor;

(c) At the request of said fiscal agents agreed to, and did, supplement said pretended monthly dividends; and

(d) Made use of false and fraudulent devices, such as fictitious and collusive sales, purchases, and leases in order to show on the books items purporting to represent income;

All for the purpose and with the effect of deceiving and misleading the purchasing public into buying large amounts of said stock:

Held, That such practices, substantially as described, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Company, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation, hereinafter referred to as respondents, have been and are 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect upon information and belief, as follows:

PARAGRAPH 1. That respondents, William F. Melhuish, jr., and Henry Clay Silver, are residents of the State of New York, and are copartners under the firm name and style of Melhuish & Company, with their principal office and place of business at No. 40 Wall Street, in the city of New York, in said State of New York;

That respondents, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin, are residents of the State of Texas, each having his principal office and place of business at Fort Worth, in said State;

That respondent Edmonds Oil & Refining Corporation is now, and at all times hereinafter mentioned was, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with a capitalization of 2,000,000 shares of the par value of $1 each, and maintains a statutory office at Shreveport, in said State, with its executive office at Fort Worth, in the State of Texas.

PAR. 2. That the individual respondents, and each of them, for more than a year last past, each for and on behalf of himself and for and on behalf of the Edmonds Oil & Refining Corporation, and in conjunction with and on behalf of each other, have been engaged in promoting the said respondent Edmonds Oil & Refining Corporation, and in connection therewith have transported or caused to be transported, through the mails and otherwise, large quantities of letters, circulars, and advertising matter, into and through the various States and Territories of the United States, and have advertised and procured subscriptions for and sold stock in said corporation, and transported or caused to be transported such shares of stocks, or certificates of same, from the city of Fort Worth, in the State of

Texas, to purchasers thereof in various other States and Territories of the United States, particularly to the city of New York, in the State of New York, from which place respondent William F. Melhuish, jr., and Henry Clay Silver, trading as Melhuish & Company, for themselves and in conjunction with and on behalf of the other respondents herein, have transported or caused to be transported said stock or certificates thereof to purchasers in various other States of the United States, in competition with other persons, copartnerships, and corporations engaged in the sale and distribution of stocks and securities.

PAR. 3. That the individual respondents, each for himself and in conjunction with and on behalf of each other, and the said respondent corporation, have published, advertised, and circulated false and misleading reports, false statements, and false representations regarding the plan of the organization, assets, resources, business progress, good will, and prospects of the Edmonds Oil & Refining Corporation, and of the standing, ability, and integrity of the individual respondents associated therewith in the promotion thereof, and, more particularly, they and each of them have advertised, published, and circulated the following statements and representations as inducements to the sale of the stock of the respondent Edmonds Oil & Refining Corporation, to wit:

That a well had been brought in, one mile south of the lease of said corporate respondent, in the so-called Caddo field of Louisiana, producing 5,000 barrels of oil daily;

That contracts had been made by respondent corporation for drilling three wells upon its lease in said field, and that wells in such field came in with production of 2,000 barrels and thereafter usually settled to production of 300 to 400 barrels daily;

That its holdings or leases in the so-called Homer field in said State were surrounded by producing and drilling wells;

That an offset well to its so-called Bull Bayou lease was making 1,700 barrels daily;

That the dividends of the Edmonds Oil & Refining Corporation were not dependent on the uncertainty of drilling operations, but on the operation of refineries as efficient as could be found in the entire oil industry, refineries whose earnings in yearly rate were estimated to be $1,305,605.

That the capacity of the refinery operated by the Edmonds Oil & Refining Corporation at Fort Worth had been increased from 2,000 to 3,000, and was being increased to 4,000, barrels daily, and of the refinery at Burkburnett from 1,000 to 2,000 barrels daily, and that a refinery at Bridgeport, with a capacity of 1,000 barrels, and which was being increased to 2,000 barrels, had been acquired by respondent corporation, and had an adequate, dependable supply of oil under contract, and the additional capacity would enable the exact and known increase in earnings to be determined, so that from refinery operations alone, earnings of $2,000,000, an amount equal to the entire capitalization of said corporate respondent, might be expected;

That the respondent, the Edmonds Oil & Refining Corporation, had agreed with the respondent Melhuish & Company, that one-third of the net earnings of the former would be devoted to dividends;

That the sure and independent earnings of refineries operated by respondent Edmonds Oil & Refining Corporation warranted extra cash dividends in addition to the regular monthly dividends; that one such cash dividend of 5 per cent has been actually paid February 28, 1921;

That "the efficient Edmonds management had already increased the output and earnings of the Red River Refinery to $952.50 net per day, or, in yearly rate, $347,562.50";

That "Your Edmonds stock is today all protected by ample surplus earnings above dividend requirements."

Whereas the facts were:

That the said 5,000-barrel well was 4 miles to the west, in addition to being 1 mile south, of the so-called Edmonds lease;

That instead of wells with initial production of 2,000 barrels daily in the Caddo field usually diminishing to settled production of 300 to 400 barrels, such settled production usually averaged no more than 30 barrels, and the said lease of Edmonds Oil & Refining Corporation was itself acquired by said corporate respondent on a purchasing basis of 55 barrels of daily production from the two wells then producing thereon;

That the holdings or leases of said corporate respondent in the so-called Homer field, represented as surrounded by producing and drilling wells, were, in fact separated from production of any character by distances ranging from 6 to 16 miles;

That the nearest producing wells to the so-called Bull Bayou lease of said corporate respondent were two small pumpers more than one-half mile distant;

That the refineries were at all times operated at a substantial loss, and at no time heretofore have they, or any or either of them, produced returns sufficient to authorize a dividend in any amount whatever, but, contrariwise, their operations during the twelve months preceding June 30, 1921, disclosed a net loss of approximately $8,000;

That the said corporate respondent received from its production of oil approximately $22,000 for the entire year preceding June 30, 1921, and has been and was at all times unable and unauthorized, from said oil returns or any returns either from production or refinery operations or any other source, to pay a legitimate dividend of any kind or amount;

That during the period covered by the representations that the Edmonds management had increased the output and earnings of the Red River refinery, such refinery was neither under the control nor under the supervision, direction, or management of the respondents, or any or either of them;

That the advertised dividend of 5 per cent paid in February, 1921, by respondent, Edmonds Oil & Refining Corporation, was falsely so called, and was derived from the pretended profits of a fictitious sale of certain oil leases of little or no value, or from collusive, misleading, and deceptive arrangements in respect thereto by and between said respondent corporation and its corespondent, the copartnership Melhuish & Company, who thereupon proceeded, for themselves, and in conjunction with and on behalf of the other respondents, further to represent, through advertisements, pamphlets, circulars, and otherwise, to the investing public and to purchasers and prospective purchasers, the alleged advantages of investment in the stock of said corporate respondent, and particularly inviting attention to the so-called dividend of 5 per cent, and other dividends, past and prospective, of said Edmonds Oil & Refining Corporation, the said respondents, and each and all of them, then and there well knowing that said corporation never had enjoyed net earnings or returns or profits from any source, lawfully applicable to, or that would enable or justify the payment of, any dividend by said respondent company.

PAR. 4. That the said representations and each and all of them had the capacity to mislead and deceive, and the natural and probable tendency of each and all of them, so made to the public by respondents, was to mislead and deceive the public and thereby to induce subscriptions for and purchases of stock in said corporation.

PAR. 5. That by reason of the facts recited, the respondents have been and are using 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.

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 a complaint against William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Company, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act and served its complaint upon each and all of said respondents.

The respondents, with the exception of Edmonds Oil & Refining Corporation, filed answers and entered appearance by their attorneys, hearings were had before an examiner of the Federal Trade Commission theretofore duly appointed and testimony introduced in support of the allegations of the complaint by the Commission and by respondents, William F. Melhuish, jr., T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin in support of their answer. The testimony so taken was reduced to writing and filed in the office of the Federal Trade Commission.

And thereupon this proceeding came on for final hearing before the Federal Trade Commission, and the Commission having heard argument of counsel, and having duly considered the record, 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. Respondents, William F. Melhuish, jr., and Henry Clay Silver, are residents of the city of New York, in the State of New York, and at the times hereinafter mentioned, until on or about November 1, 1921, were engaged at No. 41 Wall Street, in the city, in a general brokerage business under the firm name and style of Melhuish & Company. Respondent, the Edmonds Oil & Refining Corporation, is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Louisiana with a capitalization of 2,000,000 shares of the par value of $1 each, maintaining a principal office and place of business at Fort Worth, Tex. Respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, organized and promoted, prior to 1920, certain oil companies, known as the Waurika Oil Companies One, Two, and Three, the properties of which were acquired by the Great Eastern Oil & Refining Corporation, another corporation organized and promoted by said last named individual respondents under the laws of Louisiana in February, 1920, and in August, 1920, the Great Eastern Oil & Refining Company became, by change of name, The Edmonds Oil and Refining Corporation. Respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, were, from the time of its organization, the active and responsible officers of respondent corporation, prescribed its policies, directed and controlled its operations, and completely dominated its active life until March, 1921, when respondent J. W. Mastin succeeded respondent W. E. Weathers as a director and thereafter until December, 1921, performed the duties of such office, and cooperated with respondents Edmonds and Hildreth in controlling and directing said company.

PAR. 2. In August, 1920, respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, as officers and directors, caused the respondent Edmonds Oil & Refining Corporation to consent to the assignment to respondent Melhuish & Company of a contract held by the Authorized Security Company of Fort Worth, Tex., to sell the stock of Edmonds Oil & Refining Corporation to the public. Thereupon respondent Melhuish & Company caused to be published and circulated throughout the United States, preparatory to the sale of such stock, exaggerated accounts of the operations and resources of the Edmonds Oil & Refining Corporation, and at the same time initiated negotiations with respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, who then controlled the respondent Edmonds Oil & Refining Corporation, for the execution of another agreement for the sale of stock of respondent corporation to supersede the agreement assigned to it as aforesaid by the Authorized Security Company. These negotiations culminated on September 14, 1920, in a new agreement between Melhuish & Company and the Edmonds Oil & Refining Corporation. It constituted Melhuish & Company the exclusive fiscal agent for the sale of 1,383,000 shares of the stock of the Edmonds Oil & Refining Corporation, which, it was agreed, would be furnished it for such purpose on the following terms, to wit, 70 cents per share to be paid by the Melhuish company to Edmonds Oil & Refining Corporation for the first 500,000 shares when so furnished, 85 cents per share for the second 500,000, and 95 cents per share for the balance. It was also agreed that Melhuish & Company should have the exclusive right to establish the retail price for which the stock would be sold to the public and a bonus of 10,000 shares was promised to Melhuish & Company upon the completion of its contract for the sale of the 1,383,000 shares. On September 17, 1920, respondent Melhuish & Company distributed among prospective purchasers in the various

States and Territories of the United States from the city of New York, State of New York, a circular in which reference was made to the dividends being paid by the respondent, Edmonds Oil & Refining Corporation, which it was declared, were based upon the steady earning power of a splendid refinery. At this time one refinery only was owned or claimed on behalf of the Edmonds Oil & Refining Corporation, and this was operated at a loss of $12,341.31 for period ending June 30, 1920, when such circular was sent out. The respondent company at the time had no earnings or profits from which dividends might be properly paid. On October 2, 1920, however, a meeting of the board of directors of respondent corporation was held which was attended by its dominant majority, respondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, at which it was resolved that the company would pay a dividend of 2 per cent of the par value of its stock on the 16th of each month, except on certain stock then held in escrow. It was further agreed by resolution that as soon as the contract hereinbefore mentioned with Melhuish & Company, executed on September 14, 1920, was in full force and effect, they would not change or alter the rate of dividends, or the dates whereon the same would be paid.

PAR. 3. Respondents, Melhuish & Company, thereupon proceeded in pursuance of and in accordance with said agreement, to offer for sale and to sell the stock of the respondent, Edmonds Oil & Refining Corporation. So-called information regarding the properties, resources, operations, and prospects of the company was from time to time furnished respondent, Melhuish & Company, to be used or incorporated in the advertising matter distributed in the campaign to sell the stock. This campaign, including the preparation and circulation of the advertising literature, was prosecuted entirely by Melhuish & Company, but respondents, T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, supplied it with the false and misleading matter which composed a conspicuous and effective part of the statements and representations in the prospectuses, pamphlets, and other circulars by which the public was influenced to buy the stock. After its commencement the campaign to sell such stock was conducted by Melhuish & Company, assisted, as aforesaid, by respondents Edmonds, Hildreth, and Weathers continuously until November, 1921, during which period respondent Melhuish & Company actually sold 848,125 shares for $1.50 per share. The certificates of such stock were transmitted from Fort Worth, Tex., to New York City and from thence to the purchasers thereof in the various States and Territories of the United States. The stock was sold by means, and as the effect, of certain statements and representations, in large quantities of advertising matter consisting of circulars, newspapers, pamphlets, letters, and other forms of printed matter, relative to the assets, resources, production, earnings, and prospects of Edmonds Oil & Refining Corporation, which respondent, Melhuish & Company, with the knowledge and consent of respondents Edmonds, Hildreth, Weathers, and Mastin, transported or caused to be transported through the mails and otherwise into and through the various States and Territories of the United States from the city of New York in the State of New York, and distributed among purchasers and prospective purchasers of stocks and securities. In substantially all of the literature so distributed and used to induce the public to purchase the said stock, false and misleading statements and representations were made which had the capacity to mislead and deceive and their probable tendency and effect was to and they did mislead and deceive the purchasing public among which the following are typical:

These 30% cash dividends are not dependent upon any sort of speculative drilling but on the steady earning power of a splendid refinery.

Assuming, however, that the well should prove disappointing, you will, at the very worst, have purchased a safe security, now paying 24% dividends. The safety of these continued dividends is not dependent on any drilling operation, but on earnings of two as fine, efficient and well-managed Refineries as can be found in the entire Oil Industry. The earnings of the Refineries alone, without including present producing wells, should total, for the next 12 months, a sum over three times dividend requirements on this total issue of Treasury Stock.

But entirely aside from any drilling operations whatsoever your funds will be safely invested in this issue from Refinery earnings alone. These are estimated to be approximately $1,305,605 for the next twelve months, or practically 100 per cent of the 1,375,624 shares of this offering of Treasury Stock. Dividend requirements on the entire issue are only $330,150.

We have just received word that the Red River Refinery of the Edmonds Company, which has averaged 600 barrels daily at a net profit of $1.25 per barrel, has increased its production until for the two weeks period ending Nov. 12th, its output averaged 762 barrels daily, with daily net earnings of $952.50. This indicates earnings for the year of $347,562.50.

Thus the indicated earnings for the next twelve months of the two efficient Edmonds refineries are:

Fort Worth Refinery	$1, 031, 855. 00
Red River Refinery	347, 562. 50
	$1, 379, 417. 50

These refinery earnings alone, which are in addition to earnings from the present producing wells, are more than FOUR times 24 per cent dividend requirements of $320,149.76 on this entire issue of 1,375,624 shares of Treasury Stock.

Dividends from refinery earnings are something which we are sure of and which enable us to place this Edmonds Treasury stock with our customers as a safe investment, yielding, moreover, a very high dividend return.

> The production of the Texas wells of the Edmonds Company is handled by the Edmonds Burkburnett refinery. This production, therefore, is neither injured nor benefited. The refinery makes the same profits on this production as formerly.
>
> Edmonds earnings are increasing. Refinery earnings are so safe, consistent, and valuable a source of revenue, and Edmonds refinery earnings are so far in excess of dividend requirements that this offering of Treasury Stock may be considered by any investor as a security of highest grade and complete safety.

In August, 1921, after Melhuish & Company had sold more than 650,000 shares at $1.50 per share as a result of said false and misleading representations, they sent out and circulated advertising matter containing the following false and misleading statements:

> The current net earnings of the company are at the rate of six times present dividend requirements.
>
> Regular cash dividends of 24% were paid during 1920, and during 1921 regular monthly cash dividends of 2% have been paid, also extra dividends of 5% cash and 5% stock. The company has never passed nor reduced its regular dividends of 2% monthly.

Although only 17,494 shares were sold in July, this representation was followed by sale of 42,241 in August, 52,638 in September, and 96,974 in October.

From time to time in the course of the campaign to sell the stock the advertising matter contained representations to the effect that the refinery at Fort Worth had a capacity of 2,000 barrels per day, which later it was announced had been increased to 3,000 barrels per day. In May, 1921, the public was informed in circular letters issued and distributed among purchasers and prospective purchasers by Melhuish & Company that the capacity of the Fort Worth refinery, already increased to 3,000 barrels per day, was being still further increased to 4,000 per day. In June, 1921, the statement was circulated among prospective purchasers that the capacity of the Red River and Bridgeport refineries was being increased from 1,000 to 2,000 barrels per day.

The facts are that the Edmonds Oil & Refining Corporation had no interest except leasehold upon the land on which its Fort Worth refinery was situated, and the capacity of such refinery was no more than 1,500 barrels of oil per day. Such capacity was not increased to 3,000 barrels as represented to the public, nor were any steps taken to equip it for the treatment of 4,000 barrels per day or more than 1,500 barrels per day. It owned only a two-thirds interest in the refinery at Bridgeport, and neither the Edmonds Oil & Refining Corporation nor respondent W. E. Weathers ever owned or had any interest in the land on which the River Bottom or Red River refinery was situated. The capacity of the said Red River refinery was at no time increased nor that of the refinery at Bridgeport, and neither of them was capable of treating 1,000 barrels of oil per day. In December, 1921, the Red River refinery was nothing but an aggregation of junk to which no one asserted any claim or title. The capacity and efficiency of each and all of these refineries was grossly exaggerated in the advertising matter circulated by the respondents in connection with the sale of stock of the respondent corporation.

The earnings from its refineries were at no time sufficient for the payment of dividends in any amount, and instead of realizing from such source profits far in excess of the dividend requirements of 2 per cent a month, from the time the company began to operate, the Fort Worth refinery or its other refineries to December 24, 1921, according to the books of the company the profit was only $9,000. Yet the respondent company distributed among its stockholders, and widely advertised the fact, as so-called dividends, prior to June 30, 1921, $95,944.11, and between June 30 and December 24, 1921, $86,928.26, or a total of $182,872.37.

The total income of the Edmonds Oil & Refining Corporation to June 30, 1921, was $178,000, and its total income from organization to December 24, 1921, was $206,000, including the $178,000. Its expenses during the entire period were $91,590 and it had only an ostensible profit of $114,410. It distributed among its stockholders as dividends during the period when respondent, Melhuish & Company, was engaged in the sale of its stock to the public, $68,186.13 more than it received from any and all sources, other than the sale of its stock, as shown by its own books. The principal part of the money described as ostensible profits, to wit, $114,410, consisted of false and fictitious items or sums improperly claimed or credited as income, on which no valid or legitimate dividend could be declared. Respondent corporation received from the production of crude oil only $17,641.99 during its entire history, from dividends from Wade Oil Company a portion of whose stock it owned, $4,868.90, and from the operation of a refinery at Bridgeport in which it owned a two-thirds interest, $1,179.73. Its other so-called income or profit was mainly derived from said fictitious transactions, carried on its books as actual and profitable operations of the company. These included items of $27,773.59 described as rentals from refineries, $54,597.73 as profits from the sale of oil leases, and alleged miscellaneous profits of $68,840.65. In order to carry the item of $27,773.59 as rental from refineries, the Edmonds Oil & Refining Corporation, at a special meeting of the board of directors, attended by respondents Edmonds, Hildreth, and Weathers, held October 9, 1920, at Fort Worth, Tex., agreed to purchase from respondent and director W. E. Weathers a so-called River Bottom or Red River refinery located at Burkburnett, Tex., for the sum of $50,000, $6,000 to be paid in cash and notes to be executed by the company in favor of respondent Weathers for $44,000. Respondent and director Weathers duly executed and delivered to the respondent corporation a bill of sale, whereupon, and in the course of the same meeting of the directors, a motion was adopted to lease this refinery to respondent and director W. E. Weathers for a sum equal to 50 cents a barrel for every barrel of crude oil run by lessee, provided that a minimum rental of 50 cents a barrel on 350 barrels should be collected for each 24 hours. Six thousand dollars in cash were paid to respondent and director Weathers by the respondent corporation and subsequently another $6,000. There was charged against respondent and director W. E. Weathers on the books of the company $175 a day for and on account of his rental of said refinery, which he had nominally sold to and immediately thereafter leased from the Edmonds Oil & Refining Corporation. This rental in the course of the eight months during which the lease was to run, equalled the purchase price for which he had sold the plant, to wit, $50,000. This procedure was followed in the books of the company until there remained as a balance of the purchase price of $50,000 due respondent and director W. E. Weathers the sum of $12,635.65, which debt was thereafter cancelled by him about the time he resigned as director. The Edmonds Oil & Refining Corporation never obtained possession of the refinery or operated it at any time. When respondent and director Weathers went through the form of selling it to the respondent corporation and in turn it went through the form of leasing it to respondent and director Weathers, it was in the possession of Frederick Delano, a receiver appointed by the Supreme Court of the United States to hold and operate certain disputed areas involved in litigation between the States of Texas and Oklahoma. During the entire time when respondent and director Weathers was being charged on the books of the company $175 a day on account of his lease of said refinery, it was operated by said receiver and the sum of $752 was received by respondent company for its use by Delano, although its books showed receipt of $27,773.59 from Weathers as rental.

The Edmonds Oil & Refining Corporation at no time refined or caused to be refined any oil in this River Bottom or Red River refinery and at no time enjoyed any income of any kind or character from it other than $752 paid by said receiver, except the false and fictitious item of $175 a day carried upon its books as a profit by reason of the aforesaid collusive arrangement with respondent and director W. E. Weathers.

The so-called profits from the sale of oil leases, to wit, $54,497.73, were derived from transactions equally false and fictitious. For instance, the Edmonds Oil & Refining Corporation owned an oil lease on 10,000 acres of land in Mississippi acquired by it for 50,000 shares of its stock. It transferred a one-tenth interest in this lease to one of its directors, respondent J. W. Mastin, in consideration of which he executed and delivered to respondent corporation his promissory notes for the principal sum of $40,000. These notes were never paid either in whole or in part and the said sum of $40,000 was carried, on account of such transaction on the books of the company and included as a profit under the item "sales of oil leases, $54,497.73."

In the month of February, 1921, respondent Henry Clay Silver urged corespondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, directors, and the Edmonds Oil & Refining Corporation to declare an extra cash dividend of 5 per cent in order to facilitate the sale of stock in the Edmonds Oil & Refining Corporation and otherwise promote the campaign then in progress by Melhuish & Company for the sale, in the various States and Territories of the United States, of 1,383,000 shares of such stock covered by the agreement of September 14, 1920.

On February 8, 1921, a meeting of the board of directors of the Edmonds Oil & Refining Corporation was held which was attended by the dominant majority, respondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers. It was agreed to sell to respondent Henry Clay Silver a one-half interest in and to certain undeveloped leases of the respondent company in the State of Louisiana for the sum of $22,500, payable $1,000 cash, $10,750 February 8, 1921, and $10,750 March 10, 1921. It was pretended that this action was taken because of the representation of Melhuish & Company that it would make a special effort to sell the securities of the Edmonds Oil & Refining Corporation during the month of February, and as an additional inducement to such activity it was agreed by the board of directors that the price of the stock to be furnished Melhuish & Company for sale during the month of February, 1921, would be reduced from 75 cents to 70 cents a share. Thereupon it was resolved by said board of directors that a stock dividend of 5 per cent and an extra cash dividend of 5 per cent should be paid to all stockholders on March 16 in addition to the regular February dividend of 2 per cent. It thus appears that not only was the so-called sale of this undeveloped property in Louisiana to respondent Henry Clay Silver utilized to create the appearance of profit to warrant an extra dividend, but was also the basis upon which the extra cash dividend of

5 per cent was declared as aforesaid on February 8. It was a false and fraudulent dividend, the plan of which was conceived for the purpose of misleading investors as to the resources and earnings of respondent company, and distributed in furtherance of a collusive and deceptive arrangement between respondent H. C. Silver and respondents and directors T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers, to induce the investing public to purchase more extensively securities of the Edmonds Oil & Refining Corporation. This money was among the alleged miscellaneous profits of $68,-840.65, consisting of profits from a collusive sale of leases of little or no value.

Another large item of alleged income clearly reflected the policy and illustrated the false and fraudulent devices adopted by respondents in their effort to induce the public to buy stock of the Edmonds Oil & Refining Corporation in the belief that the earnings of the respondent company were substantially increasing. Respondent W. E. Weathers was the owner of 151,021 shares of Edmonds stock and some time in February, 1921, as he was about to retire from active connection with the company as director, he entered into an agreement with respondents and directors T. A. Edmonds and Y. E. Hildreth to purchase his stock at 30 cents per share. Thereafter, on April 4, 1921, at a meeting of the board of directors of respondent company, attended by respondents and directors T. A. Edmonds, Y. E. Hildreth, and J. W. Mastin, the successor to respondent W. E. Weathers in such office, it was agreed that the respondent Edmonds Oil & Refining Corporation would purchase one-half interest in the contract of respondents and directors Edmonds and Hildreth with respondent and retiring director Weathers for the purchase of said 151,021 shares of stock, and the respondent corporation advanced $16,000 as the first payment to respondent and retiring director Weathers on such stock. Thereafter this stock so purchased from respondent and retiring director W. E. Weathers was furnished to respondent Melhuish & Company for the sum of 75 cents a share and sold to the public for $1.50 a share, as treasury stock of the Edmonds Oil & Refining Corporation. Approximately $30,000 derived by the Edmonds Oil & Refining Corporation from this operation, in conjunction with its respondent directors, was carried on the books of the company as a miscellaneous profit. Instead therefore of actual profits of $114,686.24 with dividend payments, $68,186.13 in excess of earnings, the $182,872.37 paid as dividend exceeded by $163,000 the earnings of the company. In other words, respondent company with an income of approximately $20,000, paid in dividends approximately $183,000.

PAR. 4. In respect to the production of oil, it was falsely represented by Respondent Melhuish & Company in the circulars and other advertising matter distributed by it in connection with the sale of stock of Edmonds Oil & Refining Corporation, as follows:

1. That a well producing 5,000 barrels of oil daily was situated within 1 mile of its lease in the Pine Island field of Louisiana, whereas in truth the well to which this representation related was 4 miles from said lease. It did not produce 5,000 barrels daily, or at all, during its brief period of existence. It did produce a large quantity of fluid consisting chiefly of water. After a short time during which it yielded only $1,048 in oil it was abandoned as worthless.

2. That the Edmonds Oil & Refining Corporation had two producing wells in the Caddo oil field of Louisiana in which the initial production of wells was declared to be usually 2,000 barrels of oil daily followed by a settled production of 300 to 400 barrels. The wells in question were purchased by the Edmonds Oil & Refining Corporation on the representation that they produced 55 barrels daily instead of 300 to 400 and in July, 1920, long prior to the above and foregoing representation to the public. The Great Eastern Oil & Refining Corporation, predecessor of respondent corporation in ownership of said wells, had refused to pay a balance of $25,000 due on the purchase price of said wells because the production had declined within three months after their purchase on March 1, 1920, to one-sixth of the reputed production of 55 barrels per day. This condition of the wells and each and all of the steps taken to avoid payment of the balance of said purchase price, were well known to respondents T. A. Edmonds, Y. E. Hildreth, and W. E. Weathers long prior to the acquirement of the wells by Edmonds Oil & Refining Corporation, and to the above and foregoing false and misleading representation to the public in connection with the sale of stock, in pursuance of information communicated by them to Melhuish & Company.

3. That the Edmonds Oil & Refining Corporation was engaged in the complete cycle of the oil industry—Producing, Refining, and Marketing—and that the net earnings from each of these three divisions were so considerably in excess of dividend requirements on the total stock outstanding as to give from each or any one of these three sources of income that element of safety of investment which every investor should seek, whereas in truth and fact the only returns or income the respondent corporation derived from the production of oil during its entire existence was the sum of $17,641.99, aforesaid, and dividends from the Wade Oil Company in the sum of $4,688.90.

PAR. 4. That the respondent corporation owned outright or had an interest in production exceeding a total of 6,000 barrels of oil per day and in August of same year stated that it owned entirely or in part producing leases yielding 10,000 barrels of oil daily derived from fourteen producing wells, whereas in truth and fact, its income from production of oil for its entire life, approximately $22,000, failed to equal income of two or three days from such production as the public was led to believe respondent corporation was enjoying.

PAR. 5. In the years 1920 and 1921, when respondents were soliciting purchasers for and selling the stock of the Edmonds Oil & Refining Corporation, they and each of them were engaged in direct competition with numerous persons, copartnerships, associations, and corporations in Texas, New York, and other States and Territories of the United States, selling or attempting to sell, in interstate commerce, the stock or other securities of corporations and associations engaged in the production of oil, or the exploration and development of prospective oil-producing territory.

CONCLUSION.

The practices of the respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a 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 pleadings and the testimony and evidence received by an examiner of the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondents, William F. Melhuish, jr., and Henry Clay Silver, doing business under the firm name and style of Melhuish & Company; T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, J. W. Mastin, and the Edmonds Oil & Refining Corporation 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 William F. Melhuish, jr., and Henry Clay Silver, as individuals and as copartners, doing business under the firm name and style of Melhuish & Company, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin, as individuals or as officers, shareholders, or agents of the respondent Edmonds Oil & Refining Corporation, or as officers, shareholders, or agents of any other corporation, association, or partnership, and the respondent Edmonds Oil & Refining Corporation, its officers, agents, or trustees do cease and desist from directly or indirectly—

Publishing, circulating, or distributing, or causing to be published, circulated, or distributed, any newspaper, pamphlet, circular, letter, advertisement, or any other printed or written matter whatsoever, in connection with the sale or offering for sale in interstate commerce of stock or securities wherein is printed or set forth any false or misleading statement or representation to the effect that the property or operation of any corporation, association, or partnership is near, or surrounded by, producing oil wells, or any other false or misleading statement or representation concerning the promotion, organization, character, history, resources, and assets, oil production, earnings, income, dividends, progress, or prospect of any corporation, association, or partnership.

It is further ordered, That respondents, William F. Melhuish, jr., Henry Clay Silver, T. A. Edmonds, Y. E. Hildreth, W. E. Weathers, and J. W. Mastin, shall, within forty (40) 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 with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION
v.
DUDLEY D. GESSLER.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 878—May 19, 1923.

SYLLABUS.

Where an individual engaged in the sale of dyes, dyestuffs and chemicals gave and offered to give to employees of customers or prospective customers, responsible for the purchase of such products, without the knowledge or consent of their employers, sums of money aggregating annually more than 10 per cent of his sales, with the intent and effect of inducing the purchase of his goods, and with the result of increasing the price thereof, and with a tendency to cause competitors to do likewise in order to prevent him from obtaining their business:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Dudley D. Gessler, hereinafter referred to as respondent, has been and now is using 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," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. Respondent is an individual, who at all times hereinafter mentioned has been and now is engaged in the business of selling dyes, dyestuffs and chemicals used in connection with said dyes, at some of said times under his own name and at others under the trade name and style of the Keystone Chemical Company, with his principal place of business in the city of Philadelphia, State of Pennsylvania. He sells the aforementioned commodities to the operators of textile mills and other industries located in various States of the United States, and causes said products when so sold to be transported from his said place of business in the city of Philadelphia to said purchasers at various points in various States of the

United States. In the course and conduct of his said business, respondent is in competition with other persons, partnerships, and corporations similarly engaged in selling dyestuffs and chemicals in interstate commerce, and with the trade generally.

PAR. 2. In the course and conduct of his said business, respondent has for more than two years last past from time to time offered and given, and from time to time still offers and gives, cash commissions or gratuities in substantial amounts to superintendents, foremen and other employees of the aforementioned operators of textile mills and other industries, said employees having charge or supervision of the purchase of dyes, dyestuffs and chemicals used in connection therewith for use in said establishments, in order to induce said employees to purchase the aforementioned commodities from respondent or to recommend such purchase to their respective employers or as promised rewards for having induced such purchases by their employers. Said commissions or gratuities were and still are given to said employees by respondent without the knowledge or consent of their respective employers and the effect thereof has been and still is to secure preference for respondent's said commodities over and to the exclusion of similar commodities of respondent's aforesaid competitors.

PAR. 3. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said 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.

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 its complaint upon the respondent Dudley D. Gessler, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent having entered his appearance and filed his answer herein, a statement of facts was agreed upon by counsel for the Commission and respondent, to be taken in lieu of evidence, and thereupon this proceeding came on for final hearing, 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 conclusion:

PARAGRAPH 1. Respondent is an individual who at all times hereinafter mentioned has been and now is engaged in the business of selling dyes, dyestuffs and chemicals used in connection with said dyes, at some of said times under his own name and at others under the trade name and style of the Keystone Chemical Company, with his principal place of business in the city of Philadelphia, State of Pennsylvania.

PAR. 2. Respondent sells the above-described commodities to the operators of textile mills and other industries located in various States of the United States and causes said products when so sold to be transported from his said place of business in the city of Philadelphia to said purchasers at various points in various States of the United States. In the course and conduct of his said business, respondent is in competition with other persons, partnerships, and corporations similarly engaged in selling dyestuffs and chemicals in interstate commerce, and with the trade generally.

PAR. 3. Respondent, from time to time, for two years prior to the issuance of the complaint herein on April 28, 1922, in the course and conduct of his said business, gave, and offered to give, to certain superintendents, foremen and other employees of the above-mentioned operators of textile mills and other industries who had charge or supervision of the purchase for use in such mills and industries of dyes and dyestuffs and chemicals used in connection therewith, substantial cash commissions and sums of money which ranged from $30 in some instances to $500 in other instances per year and amounted in the aggregate to more than $2,900 annually, or more than 10 per cent of respondent's sales.

PAR. 4. Respondent gave and offered to give such cash commissions and sums of money to such superintendents, foremen and other employees without the knowledge or consent of their respective employers in order to induce and with the effect of inducing such employees to purchase the above-described commodities from respondent and recommend such purchases to their respective employers and as promised rewards for having induced such purchases by their employers.

PAR. 5. Respondent's practice of giving and offering to give cash commissions and sums of money, as above described, secures preference for respondent's said commodities over and to the exclusion of similar commodities of competitors of respondent and tends to cause competitors to give, and offer to give, cash commissions and sums of money of substantially like amounts to employees of their customers and prospective customers for the same purpose and with the same effect as a means of protecting their trade and preventing the respondent from obtaining the business enjoyed by them.

PAR. 6. The cash commissions and sums of money so given, as aforesaid, are part of the cost of transacting business; and the price charged for the commodity so sold is an amount equal to the cost of doing business plus a profit.

CONCLUSION.

The above-described acts and things done by respondent are all to the prejudice of the public and respondent's said 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.

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer thereto, and a stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and its conclusions 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, Dudley D. Gessler, and his agents, servants, employees and representatives cease and desist from, directly or indirectly, giving or offering to give to superintendents, foremen or other employees or representatives of customers or prospective customers without the knowledge or consent of their employers, cash commissions, sums of money, or other things of value, in order to induce such employees or representatives to purchase on behalf of their employers the products of respondent or to recommend such purchase to their employers, or as promised rewards for having induced such purchase by their employers.

It is further ordered, That respondent, Dudley D. Gessler, shall within thirty (30) 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.

FEDERAL TRADE COMMISSION
v.
PENN LUBRIC OIL COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 910—May 19, 1923.

SYLLABUS.

Where a corporation engaged in the sale of lubricating oils composed of the so-called Pennsylvania grade of oil mixed with cheaper and inferior oils; in posters, stationery, and other advertising matter represented the same as Pennsylvania oils, and only inadequately advised the purchasing public, through small stickers or circulars which did not reach the attention of any considerable number of persons, that said oils were not composed exclusively of said superior and more expensive stock; with the result that it was thereby enabled to obtain a higher price for its products than it could otherwise have obtained; to the injury both of competitors dealing in pure Pennsylvania oil and of those dealing in a mixture thereof and so advertising and branding the same:

Held, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest, 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 charges that the Penn Lubric Oil Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Penn Lubric Oil Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the city of Kansas City, in said State. It was at all times hereinafter mentioned and still is engaged in the business of selling lubricating oils and greases and causing such products, when sold, to be transported from the place of manufacture in the city of Kansas City, aforesaid, to purchasers thereof located in other States of the United States and the territories thereof and the District of Columbia, and there is now and was at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States and the District of Columbia, and particularly from the city of Kansas City, aforesaid, and therefrom to, into and among the various other States and Territories of the United States and the District of Columbia. In the course of its business respondent was at all times hereinafter mentioned and still is in competition with other corporations, partnerships and individuals engaged in the manufacture and sale of similar products in and among the various States and Territories of the United States and the District of Columbia.

PAR. 2. The greater part of the products sold by the respondent is and has been for more than two years last lubricating oils. Pennsylvania oil, which is a kind and grade of oil found in the State of Pennsylvania, is considered in the trade to be a high-grade lubricating oil and for that reason commands a higher price than do oils which are not so highly regarded; most of the lubricating oils made and sold by the respondent are now and have been for more than two years last past made of a compound of Pennsylvania oil and of inferior and cheaper oils, the percentage of Pennsylvania oil in some of such compounds being as low as 10 per cent, and such compounds are not considered in the trade of as high a quality as is pure Pennsylvania oil and do not for that reason command as high a price as do pure Pennsylvania oils. The respondent now uses and for more than two years last past has used various forms of advertising which have been and are calculated to deceive the buying public into believing that the lubricating oils sold by the respondent and compounded by it as aforesaid are and have been pure Pennsylvania oils.

PAR. 3. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said 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.

REPORT, MODIFIED FINDINGS AS TO THE FACTS, AND MODIFIED 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, Penn Lubric Oil Company, a corporation, charging it with the use of unfair methods of competition in interstate commerce, in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, and filed its answer herein, hearings were had before an examiner of the Federal Trade Commission, theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of said complaint, which evidence was duly recorded, duly certified and forwarded to the Commission; and the respondent having made, executed and filed an agreed statement of facts, in which it waives the filing of exceptions to the findings herein and admits the truth thereof, and waives the filing of brief and stipulates and agrees that the Federal Trade Commission shall take such agreed statement of facts and proceed forthwith with such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter therein without the presentation of argument in support of same, and the Federal Trade Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Penn Lubric Oil Company, is a corporation, duly organized and doing business, with its principal office and place of business in the city of Kansas City, Missouri.

That it was for six years last past, and is now, engaged in the business of selling lubricating oils and greases, and causing such products, when sold to be transported from Kansas City, Missouri, to purchasers thereof located in other States of the United States, and that there is now, and has been during the six years last past, a constant current of trade and commerce in said products between and among the various States of the United States, and particularly from the City of Kansas City, Missouri to, into, and among the various other States and Territories of the United States;

That the respondent, in the conduct of such business during said six years, was, and still is, in competition with other corporations, partnerships, and individuals engaged in the manufacture and sale of similar products in and among the various States and Territories of the United States.

PAR. 2. Pennsylvania oil, which is a kind and grade of oil produced in the Appalachian field, is a high-grade lubricating oil, and is regarded by the public as a superior grade of oil, by reason of which it commands a higher price than other oils produced in the

Mid-Continent field and in the California field, and is also regarded as a higher grade and a more desirable oil than any blend or combination of Pennsylvania oil with the oils produced in said other fields, and commands a higher price in the market than such blend with inferior oils.

That the Penn Lubric Oil Company sells its oil under the name of "PLOCO."

That said respondent compounds or mixes a certain quantity of Pennsylvania Bright or Pennsylvania "E" stock with double filtered Mid-Continent neutrals, and the different grades of oils thus produced and sold by respondent are designated as "PLOCO" A, B, C. D, E, F. "PLOCO" G sold by respondent is a 100 per cent Pennsylvania oil.

PAR. 3. That in advertising its products, respondent displays throughout its trade territory, in the garages and other places where its "PLOCO" oil is sold, large cloth posters or banners, 6 feet long by 3 feet wide, which read as follows:

"We sell (Genuine)
PLOCO
Pennsylvania
AUTOMOBILE OIL — and — GEAR GREASE
TRACTOR OIL

Manufactured
by PENN LUBRIC OIL CO., KANSAS CITY, MO."

The word "PLOCO" appears upon said posters in very much larger letters than the balance of the reading matter.

Also, the respondent extensively uses, throughout its trade territory a small poster about 15 inches long by 7 inches wide, which reads as follows:

"PLOCO
PENN LUBRIC OIL CO.
Pennsylvania Oils
Home Office Branch
and Works Shipping Stations
KANSAS CITY, MO. In Other Cities
The Home of Ploco Motor Oil and Gear Grease"

Also, the respondent has used in its business an envelope, upon which was printed, in the upper left-hand corner, the following words:

"PLOCO Automobile Oil They are Pennsylvania
Tractor Oil Products
Noiseless Gear Grease HIGH GRADE"

Also, the respondent has used in its business an envelope, upon which was printed, on the upper left-hand corner, the following words:

"PLOCO Auto Oil (Carbonless) They are Pennsylvania
Liquid Fiber Cement Products
Noiseless Gear Compound HIGH GRADE"

Also, the respondent in its business used a letterhead, which reads as follows:

"Motor and Tractor Oil PLOCO Motor and Tractor Gear Grease

PENN LUBRIC OIL COMPANY
Kansas City, Mo.
We Sell Pennsylvania Oils"

PAR. 4. That the small circular stickers placed upon the containers in which the oils were conveyed, or the circulars sent out to dealers, and the certificates of guarantee given to dealers, copy of which stickers and certificates follows:

THIS
OIL IS
PRODUCED BY
COMPOUNDING
Heavy-Bodied Pure
PENNSYLVANIA OIL
with
Double Filtered Mid-Continent Oil

PENN LUBRIC OIL CO.
Kansas City,
Mo.

CERTIFICATE OF GUARANTEE
Given by
PENN LUBRIC OIL COMPANY
Kansas City, Mo.

Dated at the General Offices of the Company
Kansas City, Mo.

This Certificate entitles the holder ———————— to positively guarantee that every package of PLOCO MOTOR OIL shipped by the PENN LUBRIC OIL COMPANY, contains genuine Pennsylvania Oil and a label to this effect is pasted on every package before leaving our plant. Our oils are produced by compounding heavy bodied pure Pennsylvania Oils with double-filtered Mid-Continent Oils. We offer a liberal reward for proof of any man offering for sale any inferior oil and representing it to be PLOCO MOTOR OIL.

R. O. BONE,
Pres. and Gen. Mgr.
Certificate No. ______.

That the above did not reach the attention of any considerable number of the purchasing public, and had no material effect of counteracting the impression upon the purchasing public made by the general display advertising of respondent as above set forth.

PAR. 5. That the advertisements of the respondent by which it placed its product "PLOCO" before the public as above set forth, are misleading, and had and have the capacity and tendency to mislead and deceive the purchasing public and to induce the said purchasing public to purchase said "PLOCO" oil, of the grades from "A" to "F," inclusive, upon the mistaken belief that all the different grades of oil sold by respondent under the name of "PLOCO" are made from crude oil of the Pennsylvania grade, which oil is generally regarded as the highest grade of oil, and superior to oil produced in the Mid-Continent field and California fields and enables the respondent, by reason of such deception, to obtain a higher price for said "PLOCO" oil than it otherwise could if the purchasing public knew the facts.

PAR. 6. That the advertisement and sale by said respondent of the different grades of "PLOCO" as though made from the superior Pennsylvania grade of oil, when in truth and in fact "PLOCO" oil, with the exception of the "G" grade, is a mixture of Pennsylvania oil with western oil which is generally regarded as inferior to oil of Pennsylvania grade, had and have a capacity and tendency to destroy or lessen the demand upon the part of the purchasing public for genuine Pennsylvania oil, and in that way injure the business and reputation of the competitors of the respondent who are engaged in the sale of pure Pennsylvania oil, and also had and have a capacity and tendency to injure those competitors of respondent who are using a mixture of Pennsylvania oil and western oil the same as respondent, but who are advertising and branding the same as such mixture.

CONCLUSION.

The practices and acts of respondent herein, as hereinbefore set forth, under the conditions and circumstances set forth in the foregoing report upon the facts, are unfair methods of competition in interstate commerce and constitute a 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."

MODIFIED 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 the evidence taken before an examiner of the Commission, and the Commission having made its findings as to the facts with its conclusions 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, Penn Lubric Oil Company, its officers, agents, representatives, servants and employees do cease and desist

From using in letters, circulars, posters or other advertising matter in connection with the sale of its oil products which are compounds or mixtures of the products of Pennsylvania crude oil, or of the products of crude oil produced in the Appalachian field and generally known in the trade as "Pennsylvania grade," with the products of any other kind of crude oil whether sold under the name of "PLOCO" or any other name, the word "PENNSYLVANIA" or words "PENNSYLVANIA OILS," without conspicuously disclosing in such advertisements that such blended oils are made by combining the Pennsylvania oil with Mid-Continent or other oils.

It is further ordered, That the respondent within thirty (30) days from notice hereof, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION
v.
FOX FILM CORPORATION.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 901—June 6, 1923.

SYLLABUS.

Where a corporation engaged in the business of producing and leasing motion pictures and photo plays to exhibitors under contracts binding them to use only advertising matter furnished or approved by it, reissued and exploited as feature pictures under new titles, photo plays theretofore issued and exploited by it under their original titles, without stating or indicating in the negotiations and contracts of lease, or in the advertising matter supplied by it to exhibitors for use in offering its pictures to the public, that the same were reissues; with the result that exhibitors and their patrons were misled into believing said photo plays to be new pictures:

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

COMPLAINT.

Acting in the public interest 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 charges that the Fox Film Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, with its main office and principal place of business in the city of New York in said State. It is and at all times hereinafter stated has been engaged in the production of motion pictures and photoplays, and of thereafter leasing and selling to the owners and operators of moving-picture theaters throughout the United States the right to exhibit said plays to the public. Said owners and operators are hereinafter called exhibitors. For the purpose of contracting with exhibitors for said exhibition rights and distributing to them its said motion pictures and photoplays, respondent maintains agencies at various points in the several States of the United States. Respondent's method of doing business in connection with the exhibition of said motion pictures and photoplays to the public is as follows: It makes positive photographic films of the motion pictures and photoplays produced by it, which films it arranges and packs in such a manner as to be adapted for use in motion-picture projecting machines. Said positive films are hereinafter referred to as films. From time to time as motion pictures and photoplays are produced, and films thereof made by it, respondent ships said films from its aforesaid place of business in the city of New York to its said agencies, and said agencies deliver the same to the exhibitors for presentation to the public. Motion pictures and photoplays thus furnished for exhibition are known to the trade, and hereinafter called releases. In the course and conduct of its said business, respondent is in competition with other persons, partnerships, and corporations similarly engaged in the production and distribution of photoplays in interstate commerce and with the trade generally. Respondent through its said agencies enters into leasing contracts with the exhibitors, by the terms of which respondent agrees to furnish the exhibitor from time to time, over a fixed period in the future, its current releases and grants the right to the exhibitor to exhibit same to the public for a stated number of performances. In consideration of said undertaking, the exhibitor agrees to pay the respondent a certain sum of money stated in said lease. It is further provided in said leases that the exhibitors will not use any posters, bills, or other advertising matter to advertise exhibitions of motion pictures and photoplays contracted for in said leases except advertising matter furnished or approved by respondent. It is the custom of the trade that unless otherwise specifically agreed between the parties photoplays so furnished to an exhibitor shall be new photoplays, not theretofore exhibited to the public in the locality in which the exhibitor's theater is in each instance located, and through the representations of its agents in charge of said agencies, and by reason of said custom in the trade, it is understood and agreed between respondent and exhibitors entering into aforesaid leases that the motion pictures and photoplays furnished thereunder by respondent will be new productions not theretofore exhibited in the locality where the theater of the exhibitor is in each instance located. The amount which the exhibitor agrees to pay under the terms of the said lease for the privilege of exhibiting respondent's releases is, among other things, based upon the undertaking by respondent to furnish new releases as above set out. After a photoplay has been exhibited to the public throughout the United States, in the course of which the film has traveled from city to city and has passed a great number of times through projecting machines such films become second class or old films for the reason that they have been once generally exhibited to the public and for that reason no longer possess novelty, and frequently have become scratched, marred, and otherwise mechanically injured, so that they can not be projected upon the screen with satisfactory clearness and lack of blemish. Films thus once exhibited throughout the United States and thereafter sent out by the producer for reexhibition are known to the trade as, and are hereinafter called, "re-issues." The price fixed and paid in the trade generally for the privilege of exhibiting re-issues is much less than the amounts fixed in said leases between respondent and the exhibitors to be paid by the latter for the privilege of exhibiting respondent's releases.

PAR. 2. In the year 1919 respondent selected several photoplays which had previously been produced by it and exhibited throughout the United States and which, therefore, if re-exhibited would, under the custom of the trade, be reissues. Respondent gave to said photoplays new names, different from those under which said plays had theretofore been exhibited to the public, and correspondingly changed the films of said photoplays, and through its said several agencies supplied said films to exhibitors with which it had leases as hereinbefore set out in purported performance of respondent's aforesaid undertakings in said leases. In addition to the said changes in the names of said films, respondent furnished posters, bills, and other advertising matter to its exhibitors to be used by them in connection with said films, which advertising matter exploited said plays under said new names and wholly failed to disclose that said plays were reissues, and respondent further wholly failed to disclose to said exhibitors the fact that said films were reissues. Said exhibitors, upon receiving said reissues and advertising matter, exhibited said reissues to the public and used said advertising matter to advertise said exhibitions without knowing, and therefore without disclosing to the public, the fact that said photoplays were reissues. The photoplays referred to in this paragraph are:

A play originally issued as "The Yankee Way" and reissued as "Sink or Swim";

A play originally issued as "The Love Thief" and reissued as "The She Tiger";

A play originally issued as "The Silent Lie" and reissued as "Camille of the Yukon";

and others.

PAR. 3. The aforesaid acts and things done by respondent had the capacity and tendency to mislead aforesaid exhibitors and through them the public into the belief that aforesaid reissues were new releases and therefore to cause said exhibitors to advertise and exhibit, and the public to patronize, said exhibitions in that belief, before the fact that said plays were reissues became apparent to either said exhibitors or the public and therefore tended to injure the reputation of said exhibitors with, and to cause them to lose the good will of, the theater-going public.

PAR. 4. The above alleged acts and things done by respondent constitute an unfair method 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.

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, Fox Film Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent, Fox Film Corporation, having filed answer and entered appearance by its attorney, and hearing having been duly had before an examiner of the Commission theretofore duly appointed, in course of which agreement as to the facts in the proceeding having been made and duly entered of record, briefs having been submitted for and in behalf of the Commission and respondent by their respective attorneys, oral argument having been waived, and it having been stipulated and agreed of record that the Commission proceed forthwith to make its report, stating its findings as to the facts and issue its order disposing of this proceeding, and the Commission, having considered the record and being fully 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 respondent, the Fox Film Corporation, is and at all times hereinafter mentioned was, a corporation organized and existing under and by virtue of 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, and engaged in the business of producing motion pictures and photoplays and of leasing same to owners and operators of motion-picture theaters (hereinafter called exhibitors) in and throughout the various Territories and States of the United States, for exhibition to the public. In the conduct of such business, respondent is now and at all times hereinafter mentioned was in competition with other persons, partnerships, and corporations similarly engaged in the business of producing, distributing, leasing, and selling motion pictures and photoplays. For the purpose of dealing with exhibitors and distributing to them its motion pictures and photoplays, respondent maintains branch offices or agencies at various points in the several States of the United States.

PAR. 2. In distributing to exhibitors its motion pictures, respondent's method of doing business is as follows: It makes positive photographic films of the motion pictures and photoplays produced by it, which films it arranges and packs in such a manner as to be adapted for use in motion-picture projecting machines. These positive films are hereinafter mentioned as films. As from time to time motion pictures and photoplays are produced by respondent, films thereof are made and shipped from its aforesaid place of business in the city of New York to its various agencies or branch offices, which in turn deliver them to the exhibitors for presentation to the public. The motion pictures and photoplays thus furnished for exhibition are known to the trade as, and are hereinafter called, releases. They are furnished to the exhibitors in pursuance of contracts of lease executed between the exhibitors and the New York office of respondent, by the terms and provisions of which the respondent undertakes to supply its current releases to exhibitors together with the right to exhibit them for a stipulated sum which the exhibitors agree to pay, for a stated period. These contracts of lease also provide that the exhibitors will not use any posters, bills or other matter to advertise the exhibition of motion pictures and photoplays furnished by the respondent, except such as is supplied or approved by respondent.

PAR. 3. When a picture or photoplay has been run and generally exploited in the United States, or any considerable portion of it, and is again offered for exhibition at a later period, it is commonly known and designated as a reissue or revival. According, however, to well established generally accepted and practiced usage and custom of the motion-picture industry, unless the original title of the picture is retained or the picture is so described in the contract between the producer and the exhibitor, and in the advertising matter, as a reissue or revival of a photoplay previously released, it is understood by the exhibitor and the public that the photoplay or picture to be furnished or screened is or will be a new picture, that is to say, a continuity not previously exhibited or exploited throughout any considerable portion of the United States.

PAR. 4. On December 18, 1916, the respondent released a motion picture which was entitled "The Love Thief." On the 28th day of May, 1917, the respondent released a motion picture which was entitled "The Silent Lie," and on the 17th day of September, 1917, it released a motion picture which was entitled "The Yankee Way." Immediately following the release of each of these pictures, they were extensively exploited and exhibited throughout the United States. They were known at the time as feature pictures, being ordinary five-reel pictures, designed for the principal part of an ordinary motion-picture theater program.

PAR. 5. In the course of the season of 1919–1920 respondent reissued the old picture, "The Love Thief," and entitled it "The She Tiger"; reissued the old picture, "The Silent Lie," and entitled it "Camille of the Yukon"; and reissued the old picture, "The Yankee Way," and entitled it "Sink or Swim." It furnished each of these three old pictures so retitled to exhibitors in various States of the United States in connection with leases providing for the respondent's so-called Program Series of pictures. All other pictures furnished under such program contracts to exhibitors were new pictures.

PAR. 6. The contracts of lease in pursuance of which respondent furnished these pictures to exhibitors did not disclose that the pictures to be furnished or any of them would be reissues. The various agents, servants, and employees of respondent, in the course of negotiations leading up to and consummating contracts of lease of said three pictures between respondent and various exhibitors in the States of New Hampshire, New York, New Jersey, Michigan, Illinois, Kentucky, and Arkansas, furnished no information to such exhibitors to the effect that said pictures were reissues.

PAR. 7. Respondent furnished exhibitors with bills, posters, and other matter for use in advertising the said photoplays to the public. The advertising matter furnished exhibitors by respondent in connection with the picture "Sink or Swim" conspicuously displayed the legend "WILLIAM FOX PRESENTS GEORGE WALSH IN 'SINK OR SWIM.'" The advertising matter furnished exhibitors by respondent in connection with the picture "The She Tiger" conspicuously displayed the legend "'THE SHE TIGER' FROM THE FAMOUS NOVEL 'THE LOVE THIEF' BY N. P. NIESSEN." The advertising matter furnished exhibitors by respondent in connection with the picture "CAMILLE OF THE YUKON" conspicuously displayed the legend "'CAMILLE OF THE YUKON' BASED ON LARRY EVANS ALASKAN NOVEL 'THE SILENT LIE.'"

PAR. 8. Said advertising matter so furnished by the respondent to exhibitors in connection with the just above mentioned three pictures, and in turn, used by the exhibitors in advertising such pictures to the public, contained no matter, statement, or information which in any manner gave notice that such reissued pictures formerly had been released and exhibited to the public under other titles.

PAR. 9. The acts and conduct of respondent in so offering and holding out its said reissued pictures to the trade and general public as aforesaid, had the capacity and the tendency to and did cause exhibitors and exhibitors' patrons, in various States of the United States including the States of New Hampshire, New York, New Jersey, Michigan, Illinois, Kentucky, and Arkansas, to believe that these reissued motion-picture photoplays were new pictures, that is, continuities not previously exhibited or exploited throughout any considerable portion of the United States.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances described 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, an agreed statement of facts, and briefs of counsel for the Commission and respondent, 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, Fox Film Corporation, its agents, servants, and employees, cease and desist from directly or indirectly advertising, selling or leasing, or offering to sell or lease, reissued motion-picture photoplays under titles other than those under which such photoplays were originally issued and exhibited, unless the former titles of such photoplays and the fact that they theretofore have been exhibited under such former titles, be clearly, definitely, distinctly, and unmistakably stated and set forth, both in the photoplay itself and in any and all advertising matter used in connection therewith in letters and type equal in size and prominence to those used in displaying the new titles.

And it is further ordered, That the respondent, Fox Film Corporation, shall file with the Commission, within 60 days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to.

FEDERAL TRADE COMMISSION
v.
CARAVEL COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AS EXTENDED BY SECTION 4 OF AN ACT OF CONGRESS APPROVED APRIL 10, 1918.

Docket 792—June 21, 1923.

SYLLABUS.

Where an export house filled an order from a foreign purchaser for "Newtown Pippin Apples" with "California Newtown Pippins," and, for the purpose of securing payment under the purchaser's letter of credit, invoiced said apples as "Oregon Newtown Pippins" (recognized by the trade and understood by said export house as being superior in shipping and keeping qualities to the fruit actually sent) and declined, upon complaint by the purchaser, either to make any deduction from the purchase price paid, or to supply new goods:

Held, That such misrepresentation, under the circumstances set forth, constituted an unfair method of competition in violation of Section 5 of the Act of September 26, 1914, as extended by Section 4 of the Act of April 10, 1918.

COMPLAINT.[1]

Acting in the public interest pursuant to 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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes," the Federal Trade Commission charges that the Caravel Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of said acts, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent, Caravel Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the City and State of New York, and is now and for more than two years last past has been engaged in the business of exporting goods, wares, and merchandise from the United States to foreign countries, in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent purchases large quantities of merchandise throughout numerous States

[1] Amended complaint.

of the United States, and resells the same to purchasers located in various foreign countries; that after such merchandise is so purchased, respondent causes the same to be transported through different States of the United States in and to the City and State of New York and other seaboard cities, and then moved and transported to the purchasers thereof in foreign countries, and there is now, and has been at all times herein mentioned, a constant current of trade and commerce in such merchandise between and among the various States of the United States and foreign countries, and more especially from different States of the United States, through other States, in and to the City and State of New York, and therefrom, in and to foreign countries.

PAR. 3. That in the State of Oregon certain apples are grown which have become and are well known and established as "Oregon Newtown Pippins," which are superior in shipping and keeping qualities, for export purposes, to certain apples grown in the State of California and known and designated as "California Newtown Pippins"; all of which is and has been, for many years last past, well known to the trade and dealers in apples throughout the United States and foreign countries, and was at all times herein mentioned well known to this respondent.

PAR. 4. On or about the 29th day of August, 1919, the respondent received and accepted through a Swedish broker an order from Aktiebolaget Halfdan Buhrman of Stockholm, Sweden, for 2,000 boxes of Newton Pippin Apples, to be shipped c. i. f. Stockholm. Pursuant to this order the said Aktiebolaget Halfdan Buhrman, on December 3, 1919, caused to be placed with the National City Bank of New York, N. Y., a letter of credit calling for Oregon Newtown Pippin Apples. Respondent, in the meanwhile, had purchased Newtown Pippin Apples grown in the State of California, which he shipped in fulfillment of the above order and which he invoiced, for the purpose of obtaining payment, under the letter of credit hereinbefore mentioned, as Oregon Newtown Pippin Apples, well knowing that such apples were not Oregon Newtown Pippins. This fraudulent invoice was presented to the said National City Bank, who upon the strength thereof paid respondent the sum of $9,400, which amount respondent has retained, although demand was promptly made by the said Aktiëbolaget Halfdan Buhrman for damages for breach of contract.

PAR. 5. The above alleged acts of respondent are all to the prejudice of the public and of competitors of respondent and constitute an unfair method of competition within the 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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes," the Federal Trade Commission issued and served its amended complaint upon the respondent, Caravel Company, Inc., charging it with violation of said acts. Respondent having entered its appearance and filed its answer herein, together with stipulation as to the facts in support of the allegations of said amended complaint, agreeing, among other things, that the Commission might proceed to make its findings, conclusion, and order without further notice of proceedings, and this matter having come regularly on to be heard, and having been duly considered, and the Commission being fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Caravel Company, Inc., was at all the times mentioned in the amended complaint and now is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business in the city of New York, and has been engaged in the business of exporting goods, wares and merchandise from the United States to foreign countries in competition with other persons, firms and corporations similarly engaged.

PAR. 2. In the conduct of its business, respondent purchased large quantities of merchandise throughout numerous States of the United States and resold the same to purchasers located in various countries; after such merchandise was purchased respondent caused the same to be transported through different States of the United States to the City and State of New York and other seaboard cities, and then moved and transported to purchasers in foreign countries, and there was at all times herein mentioned a constant current of trade and commerce in such merchandise between and among the various States of the United States and foreign countries.

PAR. 3. In the State of Oregon certain apples are grown which are now known as "Oregon Newtown Pippins" which are superior in shipping and keeping qualities, for export purposes, to certain apples grown in California and designated as "California Newtown Pippins," all of which is and has been for many years last past well known to the trade and dealers in apples throughout the United States and foreign countries, and was at all times herein mentioned well known to respondent. The word "Newtown" is sometimes inaccurately called "Newton."

PAR. 4. On or about the 29th day of August, 1919, respondent received and accepted through a Swedish broker, an order from Aktiebolaget Halfdan Buhrman, of Stockholm, Sweden, in the following words and figures:

> "August 29, 1919, 2,000 boxes apples, Newton Pippins, size 125/175. October-November, by Steamer c. i. f. Stockholm, all boxes to be strapped all around for export."

PAR. 5. Pursuant to the above order, on or about the 15th day of November, 1919, respondent purchased from Harold L. Kane, of Watsonville, Calif., 2,000 boxes of Newtown Pippins, grown in the State of California, and caused the same to be shipped to respondent's order at New York City. Upon the arrival of the apples at the latter destination, respondent notified the purchaser by cable and requested a letter of credit, in response to which the purchaser established credit at the National City Bank of New York, and said bank on the 3d day of December, 1919, sent respondent a letter of credit in which respondent was advised that its drafts would be honored when accompanied with certain documents, among which was plain invoice in triplicate covering certain merchandise described in said letter of credit as follows:

> "2,000 iron strapped boxes apples, Oregon Newton Pippins, extra fancy, 125/175, price $4.70 c. i. f. Stockholm."

Said letter also advised the respondent that—

> "Conditions embodied in this letter of credit must be adhered to, otherwise payment will not be effected."

PAR. 6. On December 18, 1919, respondent invoiced the said 2,000 boxes of Newtown Pippins purchased from Harold L. Kane, as follows:

> "2,000 boxes Newton apples, Oregon Pippins."

and presented the invoice together with draft, bill of lading and other necessary documents to the National City Bank, hereinbefore mentioned, and received the sum of $9,400.00 as the purchase price of said 2,000 boxes of apples at $4.70 a box. Thereafter and upon the arrival of the above mentioned shipment of apples in Stockholm, respondent received the following cable from the purchaser:

> "Bought Oregon Newton Pippins, extra fancy. Received Californiâ fancy. Fruit unsatisfactory. Claim either new goods or price reduced $1.00 per case."

which claim was not allowed by respondént.

CONCLUSION.

The practice of the respondent, under the circumstances described in the foregoing findings, is an unfair method of competition, within the 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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having come regularly on to be heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer thereto and stipulation as to the facts by the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has 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," as extended by the provisions of Section 4 of an Act of Congress approved April 10, 1918, entitled "An Act to promote export trade, and for other purposes."

It is therefore ordered, That the respondent, Caravel Company, Inc., its officers, agents, employees, and servants be, and they are hereby, ordered to cease and desist from falsely describing, in invoices or by any other means, articles shipped in foreign commerce for the purpose of obtaining payment on such falsified document for the articles shipped.

FEDERAL TRADE COMMISSION
v.
THE HOLSMAN COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 981—June 21, 1923.

SYLLABUS.

Where a corporation engaged in the sale of toilet articles composed in whole or in part of nitrated cellulose or celluloid resembling ivory in color and general appearance; as a means of bringing the same to the attention of the purchasing public and promoting the sale thereof, in its catalogues and other advertising matter described such articles as "French Ivory"; with a capacity and tendency to mislead and deceive the purchasing public and to induce the purchase thereof as and for ivory:

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

COMPLAINT.

Acting in the public interest 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 charges that the Holsman Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Illinois with principal office and place of business in the city of Chicago, in said State. It is now and at all times hereinafter mentioned has been engaged in the business of selling, in wholesale quantities to retail dealers, various lines of merchandise including jewelry, novelties, and toilet articles, and in the conduct of its business causes articles so sold by it to be transported to the purchasers thereof, from the State of Illinois, through and into other States of the United States. In the course of said business respondent continuously has been and is now in competition with other persons, partnerships, and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. Respondent in the course of its business as described in paragraph 1 hereof sells toilet articles composed, in whole or in part, of nitrated cellulose or pyroxylin plastic, known commercially as "celluloid," "pyralin," "fibreloid," "viscoloid," and by other names; that some of the articles so sold by respondent resemble ivory in color and general appearance, and respondent as a means of bringing such products to the attention of the purchasing public and enhancing the sale thereof, distributes and has distributed catalogs and other advertising matter to its customers and to prospective customers and the trade generally, in which advertising matter such articles are described as "French Ivory," and the use of such advertising matter by respondent was intended and calculated by respondent to mislead and deceive the purchasers of such articles from respondent, as to the quality and value of such articles, and such advertising matter had the capacity and tendency to mislead and deceive the public and to induce a substantial portion of the public to purchase said articles upon the erroneous belief that such articles are made of ivory in whole or in part.

PAR. 3. There is a considerable number of competitors of respondent who sell toilet articles composed of the basic materials known commercially as "celluloid," "pyralin," "fibreloid," "viscoloid," etc., which materials resemble ivory in color and general appearance, and which competitors advertise and brand the articles sold by them in competition with those sold by respondent, as "Ivory Colored," "Imitation Ivory," or with words of like import, coupled with the name of the material of which the articles were composed.

PAR. 4. That on May 17, 1920, a conference was held by representatives of the manufacturers of the basic material known as pyroxylin plastic, and manufacturers of and dealers in various articles made from such basic materials, which conference was called by the Federal Trade Commission to meet at its offices in Washington, D. C.; that at such conference a resolution was passed which condemned the use, as applied to articles made of pyroxylin plastic, of the word " Ivory " in any other than an adjective sense and then only when coupled with the name of the material, or some other proper qualifying term.

PAR. 5. The above alleged acts and things done by 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.

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 Holsman Company, a corporation, 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 thereafter 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, and in lieu of testimony and proceed forthwith upon such agreed statement of facts to make its findings and such order as it may deem proper to enter herein, without the introduction of testimony or the presentation of argument.

And the Federal Trade Commission, being now fully advised in the premises, makes this its report, stating its findings as to the facts:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent Holsman Company is now and has been since March, 1921, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, in said State, and has been during said period, and is now, engaged in the business of selling in wholesale quantities to retail dealers various lines of merchandise, including jewelry, novelties, and toilet articles, and in the conduct of its business has caused, and does now cause, articles so sold by it to be transported to the purchasers thereof from the State of Illinois through and into other States of the United States, and in the course of its said business respondent has been and now is in competition with other persons, partnerships, and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That respondent, in the course of its business described in paragraph 1 hereof, sells toilet articles composed in whole or in part of nitrated cellulose or pyroxylin plastic, known commercially as "celluloid," "pyralin," "fibreloid," "viscoloid," and by other names; that some of the articles so sold by respondent resemble ivory in color and general appearance, and respondent, as a means of bringing such products to the attention of the purchasing public and enhancing the sale thereof, distributes and has distributed catalogues and other advertising matter to its customers and to prospective customers and the trade generally, in which advertising matter such articles are described as "French Ivory." That said advertising by respondent has had, and now has, the tendency to mislead and deceive purchasers of said articles as to the quality and value of such articles, and such advertising matter has had, and now has, the tendency and capacity to mislead and deceive the purchasing public, and to induce a substantial portion of the purchasing public to purchase said articles in the erroneous belief that such articles are made of ivory in whole or in part.

PAR. 3. That a considerable number of competitors of respondent sell toilet articles composed of the basic material known commercially as "celluloid," "pyralin," "fibreloid," "viscoloid," etc., which materials resemble ivory in color and appearance, and which competitors advertise and brand articles sold by them in competition with those sold by respondent as "Ivory Colored," "Imitation Ivory," or with words of like import coupled with the names of the material of which the articles are composed.

PAR. 4. That on May 17, 1920, a conference was held by representatives of the manufacturers of the basic material known as pyroxylin plastic and manufacturers of and dealers in various articles made from such basic materials, which conference was called by the Federal Trade Commission to meet at its offices in Washington, D. C. That at such conference a resolution was passed which condemned the use, as applied to articles made of pyroxylin plastic, of the word "Ivory" in any other than an adjective sense, and then only when coupled with the name of the material or some other proper qualifying term.

CONCLUSION.

That the acts and conduct of respondent, as described and set forth in the above findings as to the facts, are 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 and the agreed statement of facts filed herein, 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, the Holsman Company, a corporation, its officers, agents, and employees, do cease and desist from directly or indirectly advertising, representing, labeling, or branding as "Ivory," articles offered for sale or sold by it, its agents or employees, unless such articles are, in fact, made or composed of ivory.

FEDERAL TRADE COMMISSION

v.

KRAUS & COMPANY, INC. AND HERMAN T. WEEKS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 996—June 21, 1923.

SYLLABUS.

Where it had been long known that cigars manufactured at Tampa, Fla., were largely composed of tobacco imported from Havana, Cuba, and such cigars had come to be widely and favorably known and generally referred to as "Tampa Cigars"; and thereafter a corporation engaged elsewhere in the manufacture and sale of cigars, and a dealer-distributor of the products of said manufacturer, caused to be affixed to or inserted in the containers of the manufacturer's product, labels or linings bearing such words or legends as "Tampa," "Smoke our 10¢ Tampa," "None Genuine unless stamped 'Tampa'," etc.; with the effect of misleading and deceiving a substantial part of the purchasing public:

Held, That such misbranding and mislabeling, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that Kraus & Co., Inc., and Herman T. Weeks, hereinafter referred to as the respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Kraus & Co., Inc., is a corporation organized under the laws of the State of Maryland and having its principal office and place of business in the city of Baltimore in said State, and for more than two years last past has been and still is engaged in the business of manufacturing and selling cigars. Said respondent in the course of its said business causes said cigars when sold to be transported from the State of Maryland through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent, Kraus & Co., Inc., for more than two years last past has caused and still does cause, the word "Tampa" to be stamped upon the covers of the boxes containing said cigars manufactured by it in Baltimore, in the State of Maryland, as aforesaid, and has affixed and does affix to said boxes labels bearing the word "Tampa," and paper linings bearing the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'TAMPA,'" and/or other legends containing the word "Tampa" alone or in connection with other words, and all referring to said cigars manufactured by the said respondent, Kraus & Co., Inc., as aforesaid.

PAR. 3. Respondent, Herman T. Weeks, doing business under the name and style of Weeks Brothers, at Pittston, in the State of Pennsylvania, for more than two years last past has been and still is engaged in the business of buying, selling, and otherwise dealing in cigars and particularly cigars manufactured and branded by Kraus & Co., Inc., as described in paragraph 2 hereof, and in connection and cooperating with respondent, Kraus & Co., Inc., causes such cigars to be transported from the State of Maryland, through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 4. Respondent, Herman T. Weeks, individually and/or in connection and cooperating with said respondent Kraus & Co., Inc., has caused and still does cause the word "Tampa" to be stamped upon the covers of the boxes containing the cigars manufactured by respondent, Kraus & Co., Inc., and sold by said Herman T. Weeks, and causes to be affixed to said boxes labels bearing the word "Tampa" and paper linings bearing the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'Tampa,'" and/or other legends containing the word "Tampa" alone or in connection with other words, and all referring to said cigars manufactured by said respondent, Kraus & Co., Inc., and sold by respondent, Herman T. Weeks, as aforesaid.

PAR. 5. Cigars have for many years been manufactured in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa District, and such cigars are referred to as Tampa cigars. Such cigars have been and are manufactured principally from tobacco imported from Havana, Cuba, and generally known and referred to as Havana tobacco, and cigars made in said city and district of Tampa have acquired a wide and favorable reputation and are generally considered to be the best cigars manufactured of Havana tobacco, with the exception of those made at Havana, Cuba, by reason of similarity of climate and labor conditions.

PAR. 6. The cigars manufactured by respondent, Kraus & Co., Inc., and sold by respondent, Herman T. Weeks, both individually and cooperating with each other, upon which said brands, labels, and legends, have been and are placed by them and each of them, as aforesaid, were not made in the city of Tampa or in the Tampa District, so called, and the use of said brands, labels, and legends, was intended to and did signify to the purchasing public that said cigars had in fact been manufactured in Tampa, Fla., or in the Tampa District, so called.

PAR. 7. The word "Tampa" on the containers of said cigars and the other labels and legends used in connection therewith as above described have been and are understood by a substantial part of the purchasing public to mean cigars manufactured in the city of Tampa or in the Tampa District in the State of Florida and composed principally of tobacco transported from Havana, Cuba, and each and all of said brands, labels, and other legends have the capacity and tendency to mislead and deceive the purchasing public into the belief that said cigars so branded, marked, and labeled were in fact Tampa cigars as such term is generally understood, and were manufactured from Havana tobacco, and to induce them to purchase the same in that belief.

PAR. 8. The above acts and practices of respondents, and each of them, are all to the prejudice of the public and of respondents' 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.

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, Kraus & Company, Inc., and Herman T. Weeks, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondents having entered their several appearances and filed their several answers herein and each of said respondents having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by the respondents that the Federal Trade

Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission, 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, Kraus & Co., Inc., is a corporation organized under the laws of the State of Maryland and having its principal office and place of business in the city of Baltimore in said State, and for more than two years last past has been and still is engaged in the business of manufacturing and selling cigars. Said respondent in the course of its said business causes said cigars when sold to be transported from the State of Maryland through and into other States of the United States to the purchasers thereof, and carriers on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent, Kraus & Co., Inc., for more than two years last past has caused and still does cause, the word "Tampa" to be stamped upon the covers of the boxes containing said cigars manufactured by it in Baltimore in the State of Maryland, as aforesaid, and has affixed and does affix to said boxes labels bearing the word "Tampa," and paper linings bearing the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'TAMPA,'" all referring to said cigars manufactured by the said respondent, Kraus & Co., Inc., as aforesaid.

PAR. 3. Respondent, Herman T. Weeks, doing business under the name and style of Weeks Brothers, at Pittson, in the State of Pennsylvania, for more than two years last past has been and still is engaged in the business of buying, selling, and otherwise dealing in cigars and particularly cigars manufactured and branded by Kraus & Co., Inc., as described in paragraph 2 hereof, and in connection and cooperating with respondent, Kraus & Co., Inc., causes such cigars to be transported from the State of Maryland, through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 4. Respondent, Herman T. Weeks, in connection and cooperating with said respondent Kraus & Co., Inc., has caused and still does cause the word "Tampa" to be stamped upon the covers of the boxes containing the cigars manufactured by respondent, Kraus & Co., Inc., and sold by said Herman T. Weeks and causes to be affixed to said boxes labels bearing the word "Tampa" and paper linings bear the words "Smoke Our 10¢ Tampa," and others bearing the words "None Genuine Unless Stamped 'TAMPA,'" all referring to said cigars manufactured by said respondent, Kraus & Co., Inc., and sold by respondent, Herman T. Weeks, as aforesaid.

PAR. 5. That for more than 30 years cigars have been manufactured in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa District; that such cigars are known and referred to as Tampa cigars and are manufactured principally from tobacco imported from Havana, Cuba; and that such cigars made in said city and district of Tampa have acquired a wide and favorable reputation.

PAR. 6. That the word "Tampa" alone or in connection with other words or phrases, when applied to cigars, without any other word or words descriptive of their quality or place of manufacture, is understood by a substantial part of the purchasing public to mean cigars manufactured in the city of Tampa or in the Tampa District, in the State of Florida, and composed principally of tobacco transported from Havana, Cuba.

PAR. 7. That many of respondents' competitors are engaged in the manufacture and sale of cigars to persons in States other than those in which their principal factories and places of business are located, and in causing such cigars to be transported from the States in which their principal factories or places of business are located through and into other States of the United States, pursuant to such manufacture and sales. That many of respondents' competitors have manufactured, sold, and shipped and are now manufacturing, selling, and shipping, in said commerce between the States of the United States, cigars which are manufactured in the city of Tampa, or the Tampa District, in the State of Florida, and principally from tobacco imported from Havana, Cuba, which cigars and the containers thereof bear labels, brands, and advertising matter containing the word "Tampa" alone, or in connection with other words and phrases.

PAR. 8. That the cigars manufactured and sold by respondents, both individually and cooperating with each other, upon which the brands, labels, and legends, described in paragraph 4 hereof have been and are placed by them, were not made in the city of Tampa or in the Tampa District, so called, in the State of Florida.

PAR. 9. That the labels, brands, and legends containing the word "Tampa" used by respondents upon cigars and the containers thereof manufactured, sold, and shipped by them, all as set forth in the foregoing findings, have the capacity and tendency to and do mislead and deceive a substantial part of the purchasing public into the belief that such cigars are manufactured in the city of Tampa, or Tampa District, in the State of Florida, and are in fact Tampa cigars, as such term is generally understood.

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, 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 and answers and agreed statement of facts 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 the respondents, Kraus & Company, Inc., and Herman T. Weeks, each and both of them, their agents, representatives, servants, and employees, do cease and desist from—

Using the word "Tampa" alone, or in combination with other words, in brands, labels, or legends on cigars, and the containers thereof, manufactured by or for them, or either of them, in Baltimore, Md., or any other place than the city of Tampa, Fla., or the Tampa District, so called, unless if the cigars in fact are not made in Tampa, Fla., or the Tampa District, such word or words are followed by words in type or lettering equally conspicuous with the word "Tampa" which state the true place of manufacture.

It is further ordered, That the respondents, Kraus & Company, Inc., and Herman T. Weeks, shall within sixty (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.

FEDERAL TRADE COMMISSION

v.

THATCHER MANUFACTURING COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 738—June 26, 1923.

SYLLABUS.

Where the largest producer of milk bottles in the United States, with the exclusive right to manufacture milk bottles on what had been, until a short time theretofore, the only successful automatic bottle-making machine, acquired indirectly the stock, businesses, and properties of four competing companies (and thereby the exclusive right to manufacture milk bottles on the only other successful automatic bottle-making machine), with the result that all competition, both between the businesses so acquired and between itself and said businesses, was eliminated, commerce in the sections and communities involved was restrained, and there was a tendency to create in itself a monopoly in the milk bottle business:

Held, That such acquisition of stock, under the circumstances set forth, constituted a violation of Section 7 of an Act of Congress approved October 15, 1914.

COMPLAINT.

Pursuant to the provisions of an Act of Congress approved October 15, 1914 (the Clayton Act), entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Federal Trade Commission, having reason to believe that Thatcher Manufacturing Company, hereinafter referred to as respondent, is and has been violating the provisions of Section 7 of said Act of Congress, issues this amended complaint and states its charges in that respect as follows:

PARAGRAPH 1. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of New York, with its principal office, manufacturing plant and place of business at Elmira, N. Y., with branch offices and manufacturing plants at Kane, Pa., Streator, Ill., Clarksburg and Cedar Grove, W. Va., Mt. Vernon, Ohio, Lockport, N. Y., and in other States of the United States. It is, and since 1905 has been, engaged in manufacturing milk bottles, and in selling, shipping, and transporting such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and for many years has been engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. (*a*) Travis Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of West Virginia, having its principal office, place of business, and manufacturing plant at Clarksburg, W. Va., with a branch plan at Cedar Grove, W. Va., and was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(*b*) Essex Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of Ohio, having its principal office and place of business at Mt. Vernon, Ohio, and with manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, W. Va., and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(*c*) Lockport Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of New Jersey, having its principal office, place of business, and manufacturing plant at Lockport, N. Y., and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(*d*) Woodbury Glass Company is, and for many years has been, a corporation organized under the laws of Indiana, with its principal office, place of business and manufacturing plant at Winchester, Ind., and is and has been engaged in manufacturing condiment bottles and bottles of other types and kinds, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and has been engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

(*e*) The J. T. & A. Hamilton Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of Pennsylvania with its principal office, place of business, and manufacturing plant at Pittsburgh, Pa. Formerly the J. T. & A. Hamilton Company was a partnership, but was later organized as a corporation as aforesaid. On and prior to August 28, 1919, and for some time subsequent thereto, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act), in competition with respondent and with other persons, firms, and corporations similarly engaged.

PAR. 3. The Owens Bottle Company is a corporation under the laws of Ohio and was organized originally as Owens Bottle-Machine Company but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware. The Owens bottle blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semi-automatic machines or by hand labor. The Owens bottle blowing machine was the first, and until the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903 the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine and has secured and owns in its own right six or more patents covering such improvements and additions. The Owens Bottle Company did not and does not manufacture milk bottles.

PAR. 4. The Owens Bottle Company has licensed and leased or sold Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing glass bottles and other glassware, and the manufacture, sale, licensing, and leasing of the Owens bottle-making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses, and leases from the Owens Bottle Company, the respondent acquired and still owns the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire.

PAR. 5. After the respondent had acquired and was using said Owens bottle-blowing machines as aforesaid, the Hartford-Fairmont Company of Hartford, Conn., produced a patented and improved machine for successfully making milk bottles and other glassware automatically, and said Hartford-Fairmont machine was different from, and, in efficiency and economy of operation, equal or superior to the Owens bottle-blowing machine. The Hartford-Fairmont Company granted exclusive licenses to use its bottle-making machines for making milk bottles to four certain companies, namely, the said Travis Glass Company, Essex Glass Company, Lockport Glass Company and J. T. & A. Hamilton Company, and also granted a nonexclusive license to the said Woodbury Glass Company to use said machines for producing condiment bottles, including the right to make fruit jars, grape juice, cider, vinegar, horse radish, and catsup bottles, and bottles, and containers for food and food ingredients. Such licenses so granted to the said Travis, Essex, Lockport, and Hamilton companies contained conditions and limitations under which the use of said machines for manufacturing milk bottles was exclusive in said four companies, and no license or machine could be transferred without the consent of Hartford-Fairmont Company. Under said licenses the Travis Glass Company, Essex Glass Company, Lockport Glass Company and J. T. & A. Hamilton Company maufactured milk bottles and sold and transported such bottles to purchasers among the several States of the United States and the District of Columbia in interstate commerce in competition with each other and with the respondent.

PAR. 6. The said bottle-making machines so produced, leased, and licensed by the Owens Bottle Company and Hartford-Fairmont Company, at the time the events herein set forth took place, were the only successful entirely automatic bottle-making machines devised and leased or sold as a complete unit, and the exclusive right to use said machines for manufacturing milk bottles was vested in and restricted to the respondent and the said Travis, Essex, Lockport, and Hamilton companies.

PAR. 7. On or about August 28, 1919, the respondent, while engaged in commerce as aforesaid, acquired the whole of the stock or other share capital of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, the said corporations hereinabove described, while each of said corporations was engaged in interstate commerce as aforesaid in competition with the respondent. The effect of such acquisition of said stock or share capital was to substantially lessen competition between the respondent and each of said corporations whose stock or share capital was so acquired, namely, Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and between each of said corporations whose stock or other share capital was so acquired and each other of said corporations. Such acquisition of said stock and share capital also tended to create in the respondent a monopoly in interstate commerce in the milk-bottle business, and was and is violative of said Act of Congress approved October 15, 1914 (the Clayton Act). The scheme and the methods by which the respondent acquired the said stock or share capital of said corporations are hereinafter set forth substantially.

PAR. 8. In 1919 a gentleman by the name I. T. Axton, then president and principal stockholder of the Woodbury Glass Company, attempted to merge or consolidate the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and acquire the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. In pursuance of said plan Axton secured options on the outstanding capital stock of said Travis, Essex, Lockport, and Woodbury companies, such options expiring on or about August 28, 1919. Failing to accomplish such merger himself, Axton, in July, 1919, approached F. E. Baldwin, the president and largest stockholder of the Thatcher Manufacturing Company, and inquired if Baldwin of the Thatcher Manufacturing Company would acquire or purchase the stock of the said four companies and the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. Thereupon, Baldwin and H. C. Mandeville, a director and counsel of the Thatcher Manufacturing Company and subsequently its vice president, E. D. Libbey, president and a large stockholder of the Owens Bottle Company, and William Ford, a large stockholder in the Owens Bottle Company, agreed to purchase the stock of the Travis, Essex, Lockport, and Woodbury companies and the Hartford-Fairmont machine and license of the Hamilton Company under the options held by Axton. In pursuance thereof they organized the said Sterling Glass Company in August, 1919, with an authorized capital stock of $600,000, of which $500,000 was issued for cash, one-half of which was taken by Libbey and the remaining one-half by the respondent and certain of its agents or employees.

PAR. 9. On August 28, 1919, Axton caused the stockholders of the said Travis, Essex, Lockport, and Woodbury companies to meet in New York City, N. Y., in an office or room of the Guaranty Trust Company, said stockholders having with them the stock certificates in the respective companies ready for transfer and delivery on payment of the purchase price. On said date Messrs. Baldwin, Mandeville, Libbey, and Ford met in another office or room of the Guaranty Trust Company, and Baldwin, Libbey, and Ford executed their separate, individual promissory notes to the Guaranty Trust Company for a total of $1,610,000 and each endorsed the notes of the others so that all were liable on all three notes. The sum secured from the Guaranty Trust Company on said notes, together with the $500,000 subscribed in cash to the capital stock of the Sterling Glass Company, was used to purchase all the capital stock of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company. The certificates of stock in the respective companies were endorsed in blank by the respective stockholders of the said companies, and by them delivered to the Guaranty Trust Company, and attached to the said notes of Baldwin, Libbey, and Ford as collateral security therefor.

PAR. 10. On August 28, 1919, immediately after the purchase of said stock, the Sterling Glass Company and Baldwin, Libbey, and Ford entered into a written agreement which set forth the transaction and the facts as to said individual notes, and provided, among other things, that the Sterling Glass Company assume all liability of the other parties upon said notes, and upon the payment of said notes the Sterling Glass Company should have the right to take over the stock of said companies then pledged as collateral for said notes. Said agreement gave Ford and Libbey the option to retire from the said stock transaction, and in that event Baldwin was to assume all their liability thereunder and on the said notes, and was to procure the release of Ford and Libbey from said notes, and hold them harmless against liability thereon, and repay to Libbey the $250,000 invested by Libbey in the capital stock of the Sterling Glass Company. Upon the payment of said money and the release from endorsement and liability, Ford and Libbey were to release to Baldwin all interest in the stock of Sterling Glass Company and transfer the same to Baldwin's nominee, and Baldwin might thereafter proceed as he saw fit.

PAR. 11. On or about the same date, August 28, 1919, the Thatcher Manufacturing Company acquired by purchase the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company, and by contract of sale dated August 29, 1919, the respondent acquired all the milk-bottle business of the said Hamilton Company in the United States, outside of Allegheny County, Pa., and the said contract provided that for a period of ten years from January 1, 1920, the vendors individually should not manufacture and sell bottles outside the limits of Allegheny County, Pa., and should not manufacture and sell milk bottles made on the Owens bottle-making machine in Allegheny County, Pa.

PAR. 12. On December 11, 1919, Libbey and Ford decided to exercise their option to withdraw, and on said date so notified Baldwin and the respondent. The operation of the Essex Glass Company, Travis Glass Company, Lockport Glass Company, and the Woodbury Glass Company, after the purchase of the stock on August 28, 1919, was continued under their former management until January 1, 1920, when the entire control and direction of said companies was brought to the offices of the respondent at Elmira, N. Y., and thereafter said companies and their plants were operated by the respondent as a part thereof.

PAR. 13. In June, 1920, the certificates of stock in the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, held as aforesaid by the Guaranty Trust Company of New York, were transmitted by the Guaranty Trust Company to its agents at Elmira, N. Y., for formal transfer. Transfer of said shares of stock upon the books of the Travis, Essex, Lockport, and Woodbury companies was then made, the stock of said companies being reissued to F. E. Baldwin, president of the Thatcher Manufacturing Company, H. C. Mandeville, its counsel and stockholder and director and thereafter vice president, R. W. Niver, a vice president and director of the Thatcher Manufacturing Company, and F. L. Collins, auditor of the Thatcher Manufacturing Company, and in some instances a few shares to other persons sufficient to qualify the requisite directors in each company. All the capital stock of each of said four companies was issued to these four men, a different person being the principal transferee in the case of each company, and the other qualifying shares were issued to the other three of the four, except that where the authorized number of the directors exceeded four, qualifying shares were issued to a sufficient number of the old directors to constitute the requisite number of directors. The transferees of the stock in said transaction paid no money or other consideration for the same, nor did they receive possession of any certificates of stock. The certificates of stock which were thus issued were delivered to the agent of the Guaranty Trust Company and returned to the Guaranty Trust Company in New York where said certificates were placed as before, namely, attached to and as collateral security for the said Baldwin, Ford, and Libbey notes.

PAR. 14. Notice from Libbey and Ford of their intention to retire from said transaction was given as hereinbefore recited, and Baldwin nominated the Thatcher Manufacturing Company as the transferee of the 2,500 shares of capital stock of Sterling Glass Company owned by Libbey, and the same was so transferred by Libbey upon the payment to him by the Thatcher Manufacturing Company of the sum of $250,000 with interest. The money to purchase said 2,500 shares of stock was secured by increasing the capital stock of the Thatcher Manufacturing Company from $1,000,000 to $1,625,000 on or about April 20, 1920.

PAR. 15. Prior to June, 1920, the Thatcher Manufacturing Company accomplished a bond issue in the sum of $2,000,000, secured by a first mortgage to the Guaranty Trust Company of New York as trustee on all the assets of the Thatcher Manufacturing Company, Sterling Glass Company, Travis Glass Company, Essex Glass Company, Lockport Glass Company, and the capital stock of Woodbury Glass Company. The said bonds when executed were delivered to the underwriters, Bonbright & Company, and Hemphill Noyes & Company, who paid over the proceeds thereof to H. C. Mandeville who then and there as part of a simultaneous transaction produced the deeds and bills of sale of the Travis, Essex, Lockport, and Sterling companies to the Thatcher Manufacturing Company, and delivered said deeds and bills of sale to the underwriters for recording. The proceeds of said bond issue were then and there paid by said Mandeville to the Guaranty Trust Company, and in return therefor the Guaranty Trust Company delivered to the said Mandeville the said notes executed by Baldwin, Ford, and Libbey and the stock certificates attached thereto.

PAR. 16. In the month of June, 1920, at the request of Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders of the Travis, Essex, Lockport, and Sterling companies, respectively, the directors of said companies, namely, Baldwin, Mandeville, Collins, and Niver, and associates, resolved to transfer all the assets, rights, and property of the Travis, Essex, Lockport, and Sterling companies, respectively, to the respondent. Resolutions providing for such transfer were proposed and adopted by Baldwin, Mandeville, Collins, and Niver, and associates, as the stockholders and directors of each of said companies. During the month of June, 1920, in pursuance of said resolutions, all the assets, rights, licenses, and properties of the said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company, respectively, were transferred by deeds and bills of sale to the respondent. The Hartford-Fairmont licenses of the Travis, Essex, Lockport, Woodbury, and Hamilton companies were assigned and transferred to the respondent on or about June 1, 1920, and the Hartford-Fairmont Company assented to the same.

PAR. 17. Having caused all the assets, rights, and property of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company to be transferred and conveyed to it by deeds and bills of sale, as hereinbefore recited, the respondent proceeded to bring about a dissolution of the said Travis, Essex, Lockport, and Sterling companies, and through its said officers and agents, namely, Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders, directors, and officers of said companies also, adopted resolutions for the dissolution of the said Travis, Essex, Lockport, and Sterling companies. In pursuance of said policy the Sterling Glass Company was dissolved September 9, 1920, the Lockport Glass Company was dissolved October 20, 1920, the Essex Glass Company was dissolved September 18, 1920, and the Travis Glass Company was dissolved January 13, 1921.

PAR. 18. Prior to the purchase of the stock of the Travis, Essex, Lockport, and Woodbury companies and the milk-bottle business and the Hartford-Fairmont machine and license of the Hamilton Company, each of the said companies was a competitor in interstate commerce in the milk-bottle business with the respondent, and with each other. On and after the purchase of said stock each of said companies, namely, the Travis, Essex, Lockport, Woodbury, and Hamilton companies ceased to compete in interstate commerce with the respondent and with each other.

PAR. 19. The acquisition of the capital stock of the said Travis, Essex, Lockport, and Woodbury companies as hereinbefore set forth was contrary to law, and in violation of the provisions of an Act of Congress approved October 15, 1914 (the Clayton Act) and especially of Section 7 thereof. The transfer to the respondent of the assets, rights, and properties of the Travis, Essex, Lockport, and Sterling companies and the dissolution of said companies was an artifice and subterfuge for evading the provisions of said Act of Congress approved October 15, 1914 (the Clayton Act). The respondent secured and retains and enjoys the fruits and benefits of such violations, artifice, and subterfuge, and should be ordered to cease and desist from such violations, and divest itself of the stock acquired contrary to the provisions of Section 7 of said Act of Congress, so that competition may be restored and encouraged, and a monopoly in the milk bottle business prevented.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved October 15, 1914 (the Clayton Act), the Federal Trade Commission issued and served its amended complaint upon the Thatcher Manufacturing Company, a corporation, charging that the Thatcher Manufacturing Company is and has been violating the provisions of Section 7 of said Act of Congress.

Thereupon the respondent, having entered its appearance, filed its answer to the amended complaint of the Commission, and a stipulation of facts was entered into by the respondent and approved by the Commission, and formal hearings were had before examiners of the Commission; thereafter the whole matter regularly came on for hearing before the Federal Trade Commission upon such stipulation and the testimony, and upon the briefs and argument of counsel, and the Commission having duly considered the record, and being fully advised in the premises, makes its report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of the State of New York, with its principal office, manufacturing plant, and place of business at Elmira, N. Y. It has branch offices and manufacturing plants at Clarksburg and Cedar Grove, W. Va., Mt. Vernon, Ohio, Lockport, N. Y., and in other States of the United States. It is engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms and corporations similarly engaged, and it has been so engaged since the year 1905.

PAR. 2. The Travis Glass Company, on and prior to August 28, 1919, and until January 13, 1921, was a corporation under the laws of the State of West Virginia, with its principal office, place of business, and manufacturing plant at Clarksburg, W. Va., with a branch plant at Cedar Grove, W. Va. On and prior to August 28, 1919, and for some time thereafter, the Travis Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 3. The Essex Glass Company, on and prior to August 28, 1919, and until December 18, 1920, was a corporation under the laws of the State of Ohio, with its principal office and place of business at Mt. Vernon, Ohio, having manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, W. Va. On and prior to August 28, 1919, and for some time thereafter, the Essex Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 4. The Lockport Glass Company, on and prior to August 28, 1919, and until October 20, 1920, was a corporation under the laws of the State of New Jersey, with its principal office, place of business, and manufacturing plant at Lockport, N. Y. On and prior to August 28, 1919, and for some time thereafter, the Lockport Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 5. The Woodbury Glass Company is a corporation under the laws of the State of Indiana, with its principal office, place of business, and manufacturing plant at Winchester, Ind. On and prior to August 28, 1919, the Woodbury Glass Company was engaged in manufacturing whiskey bottles, condiment bottles, and milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firm's, and corporations similarly engaged. Since August 28, 1919, or shortly thereafter, the Woodbury Glass Company has been engaged in manufacturing condiment bottles, fruit juice bottles, fruit jars, and like glassware, and in selling and shipping such bottles and glassware to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged. On and prior to August 28, 1919, the Woodbury Glass Company was in competition with the respondent and with other persons, firms, and corporations in the sale, transportation, and delivery of milk bottles in interstate commerce.

PAR. 6. The J. T. & A. Hamilton Company is a corporation under the laws of the State of Pennsylvania ,with its principal office, place of business, and manufacturing plant at Pittsburgh, Pa. On and prior to August 28, 1919, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PAR. 7. The Owens Bottle Company is a corporation under the laws of Ohio and was organized as The Owens Bottle-Machine Company but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware, but does not manufacture milk bottles.

PAR. 8. The Owens bottle blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semi-automatic machines or by hand labor. The Owens bottle blowing machine was the first, and until about the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903 the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine, and has secured and owns in its right six or more patents covering such improvements and additions.

PAR. 9. The Owens Bottle Company has licensed and leased Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing glass bottles and other glassware. The manufacture, sale, licensing, and leasing of the Owens bottle making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses and leases from the Owens Bottle Company, the respondent acquired the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire. The respondent still owns such exclusive rights, except that the exclusive right to said improvements and said new machines terminated October 1, 1920.

PAR. 10. About 1916 or 1917 the Hartford-Fairmont Company of Hartford, Conn., produced and patented a successful bottle-making machine and a feeder therefor, and both could be operated together as a complete automatic unit. The feeder is a device for transferring molten glass from the tank into the glass moulds or bottle forming machine. The Hartford-Fairmont feeders and machines when operated together were equal, and in some respects superior, to the Owens bottle-making machines. The Owens bottle-making machines and the Hartford-Fairmont feeders and bottle-making machines are the only successful entirely automatic bottle-making machines operated as complete units.

PAR. 11. After the Hartford-Fairmont feeders and bottle-making machines had been produced and patented, the exclusive right and license to use such feeders and machines for manufacturing milk bottles were acquired by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the J. T. & A. Hamilton Company. Under such exclusive rights and with such feeders and machines, these four companies, on and prior to August 28, 1919, were successfully manufacturing milk bottles. The Woodbury Glass Company acquired a nonexclusive license to use the Hartford-Fairmont feeders only in manufacturing condiment bottles, fruit juice bottles, food containers, fruit jars, and glassware for carbonated soft drinks. The Woodbury Glass Company did not begin to use the Hartford-Fairmont feeders until August 28, 1919, or shortly prior thereto. Prior to using Hartford-Fairmont feeders, the Woodbury Glass Company manufactured whiskey bottles, condiment bottles, and milk bottles on semi-automatic machines, and so manufactured such bottles on and prior to August 28, 1919, and sold and delivered such bottles in commerce in competition with other persons, firms, and corporations.

PAR. 12. *In the year 1919 I. T. Axton, the president and a large* stockholder of the Woodbury Glass Company, attempted to merge the Woodbury Glass Company with the companies which held the exclusive rights to use the Hartford-Fairmont feeders and machines for manufacturing milk bottles. He controlled the common capital stock of the Woodbury Glass Company. In May, 1919, Axton secured options on the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and on the Hartford-Fairmont License, feeder and machine, and milk-bottle business of the J. T. & A. Hamilton Company and tried to merge those companies with the Woodbury Glass Company, but failed to accomplish the proposed merger.

PAR. 13. A short time before his options expired, Axton approached F. E. Baldwin, the president and largest stockholder of the respondent, and suggested that the Thatcher Manufacturing Company, or Baldwin and his associates, exercise the options and rights which Axton held. Baldwin considered the proposition and conferred with H. C. Mandeville, a director and the general counsel of the respondent, and with E. D. Libbey, the president of the Owens Bottle Company. After negotiations and interviews with the Owens Bottle Company, its consent and advice to the purchase was obtained. E. D. Libbey agreed to assist in raising the necessary money, and also agreed to go into the transaction provided he could acquire the patents on the Hartford-Fairmont feeders and bottle-making machines. During August, 1919, it was decided to exercise the options and rights held by Axton.

PAR. 14. The options held by Axton expired September 1, 1919, and the remaining option time was short. In pursuance of the decision to exercise the options and rights held by Axton, the Stirling Glass Company, Inc., was formed on August 23, 1919, to serve as a temporary means through which the desired options and rights could be acquired quickly. Mandeville incorporated the Stirling Glass Company, Inc., under the laws of New York on August 23, 1919, with an authorized capital stock of $600,000, of which $500,000 was issued at par for cash. One-half of the issued capital stock of the Stirling Glass Company was taken by E. D. Libbey, and the remaining one-half by the respondent. Eight shares of such stock taken by the respondent were issued in the names of four agents or employees of the respondent, but such eight shares belonged to the respondent.

PAR. 15. On August 28, 1919, Axton, pursuant to directions, assembled the stockholders of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, at an office of the Guaranty Trust Company in New York City, N. Y., with their respective stock certificates ready for transfer and delivery on payment of the purchase price therefor. At the same time F. E. Baldwin, the president of the respondent, H. C. Mandeville, a director and general counsel of the respondent, E. D. Libbey, the president of the Owens Bottle Company, and William Ford, a business associate of Libbey and a large stockholder in the Owens Bottle Company, met in another room of the same building.

PAR. 16. The sum of approximately $2,110,000 in cash was required to exercise the options and rights held by Axton, and the Stirling Glass Company had $500,000 of that amount. To obtain the required balance, F. E. Baldwin, E. D. Libbey, and William Ford, on behalf of the Stirling Glass Company, discounted to the Guaranty Trust Company their three separate individual promissory notes for a total of $1,610,000, and each indorsed the notes of the other two so that all were equally liable on all three notes. Such notes were dated and discounted August 28, 1919, and were payable on demand, but the Guaranty Trust Company agreed to carry the notes for one year. The proceeds of said notes and the $500,000 of the Stirling Glass Company were deposited in the Guaranty Trust Company to the credit of the Stirling Glass Company, and used, on August 28, 1919, to acquire the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, also the common capital stock of the Woodbury Glass Company, and the license, machine, and milk-bottle business of the J. T. & A. Hamilton Company. The certificates of stock in the Essex, Travis, Lockport, and Woodbury companies were indorsed in blank by the respective vendors and retained by the Guaranty Trust Company as collateral security for the three notes of Baldwin, Libbey, and Ford. The transaction with the J. T. & A. Hamilton Company ran directly to the respondent, the J. T. & A. Hamilton Company transferring its Hartford-Fairmont license and machine and its milk-bottle business outside of Allegheny County, Pa., directly to the respondent.

PAR. 17. During the progress of said transaction at the Guaranty Trust Company, but before the capital stock of the Essex, Travis, Lockport, and Woodbury companies had been acquired, as stated in these findings, I. T. Axton wrote and delivered the following letter:

AUGUST 28, 1919.

GUARANTY TRUST COMPANY OF NEW YORK,
140 Broadway, New York City, N. Y.

GENTLEMEN: In connection with the proposed loan by your Company to Francis E. Baldwin, Esq., for the purpose of enabling him to acquire the outstanding stock of the Travis Glass Company, and the Woodbury Glass Company, I beg to inform you that the Woodbury Glass Company is engaged in the manufacture and sale of condiment bottles, jam jars, and fruit juice bottles. The Travis Glass Company is engaged in the manufacture of milk bottles only.

The Woodbury Glass Company has in the past manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering an almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining, and it is the intention of the Company gradually to discontinue all manufacturing thereof.

There is, therefore, practically no competition between the two companies.

Yours very truly, I. T. AXTON.

PAR. 18. Immediately after the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired as aforesaid, F. E. Baldwin, the president of the respondent, appeared before the vendors of the stock and requested the officers of said four companies to remain in their respective positions and continue the operation of the companies until further directions. The resignations of all officers of the four companies were taken by Baldwin to be exercised at his option. The respondent conducted these four companies under their own management until January 1, 1920, when the respondent brought the entire business of said four companies to Elmira, N. Y., and thereafter such companies were managed and directed by the Thatcher Manufacturing Company.

PAR. 19. After the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired, as stated in these findings, Baldwin, Libbey, Ford, and the Stirling Glass Company entered into the following agreement:

> *Agreement* made this 28th day of August, 1919 between FRANCIS E. BALDWIN, of the first part, WILLIAM FORD of the second part, EDWARD D. LIBBEY, of the third part, and STIRLING GLASS COMPANY, INC., hereinafter called "Stirling Company," of the fourth part.
>
> WITNESSETH:
>
> *Whereas*, Baldwin, Ford and Libbey are each making certain notes to the Guaranty Trust Company as follows:
>
> Baldwin is making a note for Six Hundred Fifty Thousand Dollars ($650,000) with collateral security of two thousand (2,000) shares of the common stock of the Woodbury Glass Company and five hundred (500) shares of the common stock of the Travis Glass Company, being all the outstanding stock of each of said Companies:
>
> Libbey is making a note of Four Hundred Eighty Thousand Dollars ($480,000) with one thousand (1,000) shares, being all the outstanding capital stock of the Essex Glass Company, as collateral; and
>
> Ford is making a note for Four Hundred Eighty Thousand Dollars ($480,000), with one thousand seven hundred sixty-two shares (1,762) of the common stock of Lockport Glass Company and one hundred ten (110) shares of its preferred stock, as collateral, together with Eighty Nine Thousand Dollars ($89,000) par value of Bonds and One Hundred Seventeen Thousand Dollars ($117,000) of notes of said Company; all of said notes being given on demand and amounting in all to One Million Six Hundred Ten Thousand Dollars ($1,610,000) and
>
> *Whereas*, the Stirling Company is a corporation organized under the laws of the State of New York, with an authorized

capital stock of Six Hundred Thousand Dollars ($600,000) of which Five Hundred Thousand ($500,000) has been paid in cash, and Libbey and Baldwin have each contributed one-half (½) of said capital stock; and

Whereas, Libbey, Baldwin and Ford have each endorsed the notes of the others, so that all are liable on all of the notes, either as maker or endorser; and

Whereas, it is the purpose of the parties hereto that at a later date a permanent company be organized to take over the ownership of the plants and assets of all the said Companies, together with the Thatcher Manufacturing Company, of Elmira, New York, and that said permanent Company shall have such capital and be organized in such form as may be agreed upon by the parties hereto, and it is agreed that the said stocks shall be held together and shall not be sold by either of the parties hereto without the consent of the others, and

Whereas, Libbey has entered into this agreement in contemplation of the purchase by him or for his account of the so-called "Hartford-Fairmont" patents covering certain automatic feeding devices and glass-blowing machinery now owned by Hartford-Fairmont Company, or under the control thereof; and

Whereas, it is agreed between the parties hereto that, if the parties do not mutually agree upon the form and capitalization of the Company and the details in respect thereto, Ford and Libbey may retire from Stirling Company and from this transaction, at their option, and shall, in that event be released from all liability as maker or endorser of said note, and Libbey shall be repaid the Two Hundred Fifty Thousand Dollars ($250,000) or other amounts contributed to the capital stock of Stirling Company; and

Whereas, Stirling Company undertakes to assume and does hereby assume all liability of the other parties hereto upon the said notes, whether maker or endorser.

Now, therefore, in consideration of the endorsements above named and of the mutual covenants herein contained and of One Dollar ($1.00), receipt whereof is hereby acknowledged by each of the parties hereto, it is agreed as follows:

First.—That Stirling Company hereby undertakes to and does hereby save the other parties to this agreement and each of them, harmless from any and all liability or obligation by reason of the making or endorsing of any of the notes above recited, and, upon the payment of the said note all of the collateral thereto shall become the property of Stirling Company.

Second.—That until the formation of the permanent Company above recited, all of the stock and collateral mentioned above shall be held together as one unit so that the said permanent Company may be formed either by merger or by sale of assets as may be determined, and that none of the parties hereto shall sell or dispose of the said stocks or collateral.

Third.—That if the so-called "Hartford-Fairmont" patents, or control thereof, shall not be acquired by Libbey within six months of the date of this agreement, or if the parties hereto shall fail to agree upon the form, capitalization or organization of the permanent Company hereinbefore referred to, Libbey may, at any time upon service of ten (10) days written notice, upon Baldwin, retire from this agreement. In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith, of each and all of the other parties hereto; to procure the release of the said other parties from said notes within four (4) months from the date of the aforesaid notice; to hold harmless and indemnify each and every of the other parties hereto from and against any and all liability for or on account of the aforesaid notes; and to repay to Libbey within four (4) months of the date of the service of the aforesaid notice upon him the Two Hundred Fifty Thousand Dollars ($250,000) aforesaid, invested by Libbey in the capital stock of Stirling Company, and all other amounts which Libbey may have so invested or advanced to Stirling Company, with interest on each such investment and advance from the date thereof, at the rate of six per cent (6%) per annum.

Fourth.—Upon the repayment of said moneys and the release of said endorsements and liability, Ford and Libbey hereby release to Baldwin any and all interest in the stock of the Stirling Glass Company, and agree to transfer the same to his nominee, and Baldwin may proceed with the organization of such permanent Company and with the disposition of Stirling Company and its assets, in such manner as Baldwin may see fit, free from all obligations under this agreement.

Fifth.—This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators and assigns of the first, second and third parties, and the successors and assigns of the fourth party.

Sixth.—This agreement supersedes and terminates an agreement made between Baldwin, Ford and Stirling Company, dated August 28, 1919, and approved and joined in by Libbey, by C. J. Wilcox, Secretary.

In witness whereof the parties have set their hands the day and year first above written.

F. E. Baldwin,
E. D. Libbey,
William Ford
Stirling Glass Company, Inc.
By H. C. Mandeville.

Par. 20. Some little time after August 28, 1919, and before December 11, 1919, it was determined that Libbey could not acquire the Hartford-Fairmont interests, and Libbey abandoned that idea. Separate written notices, dated December 11, 1919, were given by Libbey and Ford to Baldwin and the respondent stating that, as the plan of reorganization of the companies purchased under the agreement of August 28, 1919, did not meet their approval, they desired to retire from the agreement and to be relieved from further liability under the notes given to the Guaranty Trust Company. Libbey's notice also stated that he expected to be reimbursed for the money advanced for the capital stock of the Stirling Glass Company, all to be accomplished not later than April 12, 1920. Libbey was not immediately paid for his investment in the Stirling Glass Company, nor were Libbey and Ford released from liability within the time and manner provided in the third paragraph of said agreement of August 28, 1919, and by the date stated in Libbey's notice. The indebtedness and notes to the Guaranty Trust Company remained unchanged until paid by the respondent on July 3, 1920. Libbey and Ford did not appear in the transaction subsequent to December 11, 1919, except that Libbey's stock in the Stirling Glass Company was transferred of record to the respondent on June 5, 1920, and on June 7, 1920, the respondent paid Libbey $261,750 for such stock.

PAR. 21. On or about December 1, 1919, prior to the date of the notices from Libbey and Ford, the certificates of stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, acquired on August 28, 1919, were transmitted by the Guaranty Trust Company to its agent at Elmira, N. Y., and there formally transferred on the records of said companies. Such certificates were canceled, and new certificates for all the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, and for all the common capital stock of the Woodbury Glass Company, were issued to persons nominated by Baldwin. All such stock in said companies, except two or three shares in each company issued to other persons to qualify the requisite directors, was issued to the following named persons:

F. E. Baldwin, president of the respondent.

H. C. Mandeville, a director and general counsel of the respondent.

R. W. Niver, vice president and a director of the respondent, and

F. L. Collins, a confidential employee of the respondent.

F. E. Baldwin and F. L. Collins were elected president and secretary, respectively, of said Essex, Travis, Lockport and Woodbury companies.

PAR. 22. On December 5, 1919, all the stock of the Travis Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

On December 6, 1919, all the stock of the Lockport Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville.

On December 8, 1919, all the capital stock of the Essex Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. L. Collins.

On December 8, 1919, all the common capital stock of the Woodbury Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

None of the persons to whom such stock was so issued paid any money for such stock or gave any consideration therefor. The certificates so issued were not delivered to such persons, but were severally indorsed in blank by the respective persons to whom issued, and returned to the Guaranty Trust Company at New York City and held as collateral security for the said notes of Baldwin, Libbey and Ford until such notes were finally paid.

PAR. 23. During the month of September, 1919, the respondent advanced $40,605 to the Woodbury Glass Company, and during the month of October, 1919, the respondent advanced $25,000 to the Travis Glass Company. On December 31, 1919, the respondent received $75,000 from the Essex Glass Company, and that sum was mingled with and became a part of the funds and assets of the respondent. Such advances were not made in payment of any indebtedness whatever.

PAR. 24. The annual report for 1919 of F. E. Baldwin, as president of the respondent, was made to the stockholders and directors of the respondent on February 18, 1920, and in that report Baldwin formally related the acquisition of the capital stock of the Essex, Travis, Lockport and Woodbury companies in the following language:

> During the year starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmont Feeder and Milk Bottle Machine and milk bottle business of the J. T. & A. Hamilton Company. These parties, except the Woodbury Glass Company held the exclusive licenses for the Hartford-Fairmont Feeder and the machines for the manufacture of milk bottles in the U. S. The Woodbury Glass Company had a nonexclusive license for the manufacture of condiment bottles. After several months' negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies and thereby obtain the rights of the Hartford-Fairmont feeders, upon the 29th day of August, we purchased the capital

stock of the companies named and the Hartford-Fairmont feeder and the machines and the milk bottle business of the J. T. and A. Hamilton Company.

The money was borrowed for the making of these purchases of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, President of the Owens Bottle Company, and Mr. Williams Ford, a large stockholder in the Owens Bottle Company.

We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and the same is being now managed and directed by the Thatcher Manufacturing Company.

The opportunity to purchase these plants, I cannot help but feel was providential. It put us in the fore front as we never have been before in the manufacture of milk bottles. With the Hartford-Fairmont machines we can manufacture bottles at least 50¢ per gross cheaper than we can with the Owens machines.

PAR. 25. On and prior to August 28, 1919, the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company sold milk bottles in commerce in competition with each other and in competition with the Thatcher Manufacturing Company in substantially all the States and Territories of the United States. There has been no competition between the respondent and the Woodbury Glass Company since August 28, 1919. All competition between the respondent and the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company ceased not later than January 1, 1920, and no competition has since existed between any of said companies.

PAR. 26. During the month of June, 1919, the Woodbury Glass Company sold and shipped milk bottles in carload lots to purchasers in the State of Illinois. On the 8th day of April, 1919, the Illinois Glass Company of Chicago, Ill., gave an order to the Woodbury Glass Company for one carload of 200 gross, quart, private mould, Wisconsin sealed milk bottles, to be shipped on May 3, 1919, and said order contained the following instruction:

> The above car is to be followed with an additional car of quarts to be shipped the first day of each month on account of this contract until notified to discontinue.

It does not appear that such order or instruction was ever changed or discontinued.

PAR. 27. In order to finance the indebtedness to the Guaranty Trust Company under the three notes given by Baldwin, Libbey, and Ford, an agreement was made on April 10, 1920, by Baldwin with Hemphill, Noyes & Company and Bonbright & Company, bond buyers of New York City, providing a plan for a reorganization of the respondent by increasing its capital stock from $1,000,000 to $1,625,000, and also by issuing $2,000,000 of its bonds to be purchased by such bond buyers. That agreement recited that Baldwin represented a control of at least two-thirds or more of both the outstanding common and preferred stock of the respondent for the purpose of carrying out the plan therein set forth. In the agreement Baldwin is called the "Seller;" Hemphill, Noyes & Company and Bonbright & Company are called the "Buyers;" and the respondent is referred to as the "Corporation." Paragraph IV of that agreement is as follows:

IV.

Either before or at the time of the reorganization, as herein provided, the Corporation shall acquire all of the assets and the business of the following companies, to wit: Travis Glass Company, Essex Glass Company, and the Lockport Glass Company, all of the shares of stock of said companies being now owned by the Stirling Glass Company, whose shares of stock are all owned by the Corporation; and at the same time, the Corporation shall also acquire all of the common stock of the Woodbury Glass Company which is now owned by the Stirling Glass Company. As a condition of such acquisition, the Corporation shall assume all of the obligations of the aforesaid companies, which shall thereupon be dissolved.

PAR. 28. The agreement of April 10, 1920, also provided that the bonds to be issued by the respondent should be secured by a mortgage or deed of trust, and among the provisions pertaining thereto are the following excerpts from paragraph V of such agreement:

V.

Immediately upon the filing of the certificate of reorganization of the Corporation as provided by law the Seller shall cause the Corporation to authorize, make and execute an issue of $2,000,000 principal amount of its corporate bonds (hereinafter called the "Bonds"). The said issue of Bonds shall be limited to $2,000,000 principal amount thereof; shall be matured ten years after the date thereof; shall be payable, principal and interest, in gold coin of the United States of America of the present standard of weight and fineness; shall bear interest at the rate of seven per cent per annum, payable semiannually; * * *.

* * * * * * *

Should the Buyers notify the Seller that they will purchase the securities of the Corporation as hereinbefore provided, and should the Buyers contemporaneously therewith notify the Seller that it is their desire to have the bonds secured by mortgage on the property of the Corporation and the properties of the Travis

Glass Company, Essex Glass Company, and Lockport Glass Company to be acquired by it as hereinbefore provided, then and in such event the Seller shall cause the Corporation to execute a mortgage on all of its property and that of said companies, of every kind and description whatsoever, and also on the stock of the Woodbury Glass Company to be acquired by it as hereinbefore set forth, to secure the payment of principal and interest of the bonds; * * *

* * * * * * *

The Seller agrees that the following representations constitute a part of this agreement and are the basis upon which the scale hereinafter provided for is to be made:

A. * * *

B. * * *

C. That the Corporation and its aforesaid subsidiary companies have good and marketable title to all of their properties, free and clear of all incumbrances with the exception of the lien or aforesaid mortgage of $149,500 on a portion of the property of the Corporation;

D. That the business of the Corporation and its said subsidiary companies is in sound condition, the present management successful and in good standing, and that the prospects for continued profitable business are good.

Par. 29. The reorganization of the respondent was carried out in accordance with the agreement of April 10, 1920, between Baldwin and the bond buyers. Two days after such agreement, viz, on April 12, 1920, the stockholders of the Thatcher Manufacturing Company authorized an increase in the capital stock of the respondent as stipulated in the agreement. Such additional stock was issued for cash, and from the proceeds thereof the respondent, on June 7, 1920, paid Libbey $261,750 for the sum Libbey advanced for the capital stock of the Stirling Glass Company with interest thereon. The stock in Libbey's name was transferred of record to the respondent on June 5, 1920, and thereupon the respondent became the owner of record of all the capital stock of the Stirling Glass Company, except the eight shares issued in the names of agents or employees of the respondent.

Par. 30. On June 3, 1920, before the stock in Libbey's name was transferred of record or paid for by the respondent, the following communication was given to the Stirling Glass Company, and its board of directors:

June 3, 1920.

Stirling Glass Co., Inc., and the
Board of Directors thereof:

Dear Sirs: The undersigned have acquired all the shares of the capital stock of Stirling Glass Company Inc., and are desirous of having Stirling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Stirling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Stirling Glass Company, Inc., party of the third part.

Therefore, the undersigned hereby request Stirling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Stirling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford and Stirling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all of the debts and obligations of Stirling Glass Company, Inc.

Furthermore, the undersigned requests the board of directors of Stirling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Stirling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Stirling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

Yours very truly,

THATCHER MANUFACTURING COMPANY.
By F. E. BALDWIN, *Pres.*
H. C. MANDEVILLE.
ELY W. PERSONIUS.
LEO WAXMAN.
W. P. RODGERS.

PAR. 31. The Stirling Glass Company on June 7, 1920, by H. C. Mandeville, its president, executed a bill of sale by which all property and assets of the Stirling Glass Company of every kind and description, including the agreement of August 28, 1919, with all rights and interest therein, were transferred to the respondent.

Assignments or transfers dated as of June 1, 1920, of the rights and licenses to use the Hartford-Fairmont feeders and machines were executed and delivered to the respondent by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the J. T. & A. Hamilton Company. The Hartford-Fairmont Company assented and agreed to the transfer and assignment of such rights and licenses to the respondent.

PAR. 32. Pursuant to the condition expressed in Paragraph IV of the contract of April 10, 1920, for the acquisition of the assets of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, and for a dissolution of said companies, separate written notices were addressed to the Essex, Travis, and Lockport companies, and the respective boards of directors thereof, by Baldwin, Mandeville, Collins, and Niver, and the persons holding one share each of stock in such companies, and all such notices are dated June 7, 1920. It was recited in each notice that the persons whose names were signed thereto had acquired all the capital stock of the company named, and desired to have such company dissolved, and in anticipation of such dissolution to have all the properties and assets of such company as a going concern transferred to said persons or their nominee. Each company was requested to cause all the assets and property of such company to be transferred to said persons or their nominee. Resolutions providing for such transfer and dissolution were thereupon adopted by such persons as the stockholders and directors of the Essex, Travis, and Lockport companies, respectively. In each case the respondent was nominated as the transferee for the property of such companies. Deeds and bills of sale were severally drawn and executed by each company purporting to transfer and convey to the Thatcher Manufacturing Company all property and assets of every kind belonging to the Essex, Travis, and Lockport companies, respectively. Such deeds and bills of sale were executed and ready for delivery, and were executed by each company by F. E. Baldwin as president, and attested by F. L. Collins as secretary, respectively. The deeds and bills of sale from the Essex Glass Company were dated June 17, 1920. The deeds and bills of sale from the Travis Glass Company and the Lockport Glass Company were dated June 25, 1920. Each deed and bill of sale recited a consideration of one dollar and other good and valuable consideration.

Par. 33. In pursuance of the agreement of April 10, 1920, between Baldwin and the bond buyers, to accomplish the issue of bonds provided for therein, the respondent executed a mortgage or deed of trust to the Guaranty Trust Company, as trustee, to secure the payment of said bonds. Such mortgage or deed of trust included all properties of the respondent, also all properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company. The bonds to be issued and sold and to be secured by such mortgage or deed of trust were drawn and signed, and dated April 1, 1920.

Par. 34. On July 3, 1920, Baldwin and Mandeville, representing the respondent, met the representatives of the bond buyers at the offices of the Guaranty Trust Company in New York City, N. Y.

The bonds and mortgage or deed of the respondent, and also the deeds and bills of sale from the Essex, Travis, and Lockport companies were produced and delivered to the bond buyers. Such deeds and bills of sale, bonds, and mortgage or deed of trust became effective on such delivery. The bond buyers delivered the proceeds of the bonds to the Guaranty Trust Company, and such proceeds were deposited therein to the credit of the Thatcher Manufacturing Company. The respondent, by Baldwin as its president, drew a check on the fund arising from the proceeds of such bonds, in favor of the Guaranty Trust Company for $1,634,955, for payment of the three notes of Baldwin, Libbey, and Ford, with the interest thereon. The Guaranty Trust Company accepted the payment, marked such notes paid, and delivered said notes and the certificates of stock of the Essex, Travis, and Lockport companies to Baldwin and Mandeville. The certificates for the common stock of the Woodbury Glass Company were retained by the Guaranty Trust Company under the terms of said mortgage or deed of trust. The mortgage or deed of trust, and the deeds to the respondent from the Essex, Travis, and Lockport companies were placed of record by the bond buyers and the trustee. The delivery of the deeds and bills of sale, bonds, and proceeds, mortgage or deed of trust, notes and certificates of stock, and the payment of said notes occurred contemporaneously and constituted one transaction.

PAR. 35. The dissolution of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Stirling Glass Company was accomplished pursuant to the condition expressed in Paragraph IV of the agreement of April 10, 1920, and in compliance with the notices, requests, and resolutions of the stockholders and directors of said companies as heretofore stated in these findings.

The Stirling Glass Company was dissolved September 9, 1920;
The Lockport Glass Company was dissolved October 20, 1920;
The Essex Glass Company was dissolved December 18, 1920; and
The Travis Glass Company was dissolved January 13, 1921.

PAR. 36. It was admitted that the respondent acquired and now owns the common capital stock of the Woodbury Glass Company. The respondent acquired that stock through the transaction in the Guaranty Trust Company on August 28, 1919, and subsequent proceedings stated in these findings, and the capital stock of the Essex, Travis and Lockport campanies was included in the same transaction. All the common capital stock of the Woodbury Glass Company now appears of record in the names of the persons to whom such stock was issued on December 8, 1919, and January 5, 1920, as stated in paragraph 22 of these findings. The persons to whom the common capital stock of the Woodbury Glass Company was issued on December 8, 1919, and January 5, 1920, and in whose names such stock remains of record, claim no right, title or interest in or to such stock adverse to the right, title and interest of the respondent. All the common capital stock of the Woodbury Glass Company is the property of the Thatcher Manufacturing Company.

PAR. 37. The Woodbury Glass Company began manufacturing milk bottles about 1914 or 1915, and made and sold milk bottles every year thereafter until it ceased manufacturing milk bottles in 1919, and during all that time the Woodbury Glass Company was equipped for manufacturing milk bottles, and made and sold milk bottles whenever it was so disposed. Milk bottles manufactured by the Woodbury Glass Company were sold over the United States generally. On and prior to August 28, 1919, the Woodbury Glass Company had contracts outstanding for the sale and delivery of milk bottles in commerce, and subsequent to August 28, 1919, orders to the Woodbury Glass Company for milk bottles, and such outstanding contracts, were filled and completed by the Thatcher Manufacturing Company. Since August 28, 1919, the Woodbury Glass Company has not manufactured milk bottles, and there has been no competition between the Woodbury Glass Company and the respondent since that date.

PAR. 38. The production of milk bottles was not the principal business of the Woodbury Glass Company during the years 1918 and 1919. The Woodbury Glass Company produced about 34,000 gross milk bottles in 1918 and about 8,000 gross milk bottles in 1919 prior to August 28. The total production of glass bottles of all kinds by the Woodbury Glass Company in 1918 was about 200,000 gross, and its total production of glass bottles of all kinds during 1919 was about 140,000 gross.

PAR. 39. The total number of milk bottles produced and sold during the years 1918 and 1919 by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company is stated below. Such figures are by the gross, and do not include bottles made by the Essex, Travis, Lockport, and Hamilton companies by hand or by semiautomatic process, but only milk bottles made by said companies on Hartford-Fairmont machines. The figures below of 8,000 gross, giving the output of the Woodbury Glass Company for 1919, show the number of milk bottles produced by that company in 1919 prior to August 28:

	1918	1919
	Gross.	*Gross.*
Essex Glass Company	57, 380	87, 376
Travis Glass Company	59, 283	37, 016
Lockport Glass Company	88, 372	140, 781
J. T. & A. Hamilton Company	33, 087	50, 828
Woodbury Glass Company	34, 000	8, 000

PAR. 40. The Thatcher Manufacturing Company is the largest producer of milk bottles in the United States, and produced and sold milk bottles during 1918 and subsequent years in the following amounts:

	Gross.
1918	331, 055
1919	288, 713
1920	833, 870
1921	821, 750

In the year 1919 prior to the acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, the respondent produced and sold in commerce about 40 per cent of all the milk bottles manufactured in the United States. During the year 1920 the respondent produced and sold in commerce about 70 per cent of all the milk bottles manufactured in the United States. On April 23, 1920, Baldwin submitted certain information to the bond buyers in connection with the proposed bond issue of the Thatcher Manufacturing Company, and made the following statement:

> The Thatcher Manufacturing Company will have the exclusive right to make milk bottles by the only successful bottle-making machines devised, and will manufacture and sell about 90% of all the milk bottles manufactured in the United States.

PAR. 41. The contract of April 10, 1920, between Baldwin and the bond buyers provided that the bonds to be issued thereunder might be called on the terms and conditions and at the premium therein named. The bonds which the respondent issued under that contract have been called and retired, and the mortgage or deed of trust securing such bonds has been cancelled. The respondent now holds its properties and the properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company free of the lien or incumbrance of such mortgage or deed of trust.

PAR. 42. The acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and the subsequent developments and transactions stated in these findings, constituted an acquisition by the Thatcher Manufacturing Company of the stock or share capital of said four companies within the purview and in violation of an Act of Congress approved October 15, 1914 (the Clayton Act), and especially of Section 7 thereof. The transfer and conveyance to the respondent of the assets, rights, and properties of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Stirling Glass Company, and the dissolution of said companies, was an artifice and subterfuge of the respondent to evade the provisions of said act of Congress and to escape the penalties thereof. By such acquisition, artifice, and subterfuge, the respondent secured, and now retains and enjoys, the fruits, benefits, and advantages of an illegal acquisition of the stock or share capital of competing corporations engaged in commerce.

PAR. 43. The effect of the acquisition by the respondent of the said stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, as stated in these findings, was:

(a) to eliminate all competition in commerce in the milk bottle business between the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company and the Thatcher Manufacturing Company, and also between each company and each other of said companies;

(b) to restrain commerce in the milk bottle business in the sections or communities of the United States in which the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company and the Thatcher Manufacturing Company were engaged in commerce on and prior to August 28, 1919; and

(c) to tend to create a monopoly in commerce in the milk bottle business in the Thatcher Manufacturing Company.

CONCLUSION.

The acquisition by the respondent of the stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, as stated in the foregoing findings as to the facts, constituted a violation of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially of Section 7 thereof.

ORDER TO CEASE AND DESIST AND DIVEST, ETC. (MODIFIED).[1]

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on the Thatcher Manufacturing Company, the answer of the respondent thereto, a written stipulation of facts entered into by the respondent and approved by the Commission, the testimony and evidence on file, and the briefs and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing, in which it stated its findings as to the facts with its conclusions that the Thatcher Manufacturing Company is and has been violating the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially Section 7 thereof.

It is therefore ordered, That the Thatcher Manufacturing Company:

1. Cease and desist from the ownership, operation, management, and control of the assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and cease and desist from the ownership, operation, management, and control of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions, with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

2. Divest itself of all assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto

[1] This modified order made as of December 31, 1923.

from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and divest itself of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

3. Divest itself of all the stock or share capital of the Woodbury Glass Company now held and owned directly or indirectly by the Thatcher Manufacturing Company, together with all right, title, interest, and claim in and to such stock or share capital, which said stock or share capital is hereby declared to have been acquired, and is now held by the Thatcher Manufacturing Company in violation of law or as a result thereof.

4. Submit within thirty (30) days from the date of this order, for approval by the Federal Trade Commission, a plan for the performance by the Thatcher Manufacturing Company of the terms of this order, jurisdiction for this purpose being hereby retained.

FEDERAL TRADE COMMISSION
v.
PRICHARD & CONSTANCE, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 740—July 9, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of cosmetics and toilet articles,

(*a*) Made, or attempted to make the acceptance of its invoices to constitute contracts binding retail dealers to maintain the prices fixed by it for its products;

(*b*) For the purpose of securing the cooperation of dealers,

(1) Offered and gave a monthly bonus in goods to such dealers as agreed to, and did, maintain its prices;

(2) Announced that its products were not for sale to price cutters and that it would refuse them such bonus, without their written assurances of price maintenance, and did so refuse; and

(3) Urged price cutters to conform to its prices, claiming control of the situation by reason of its method of marketing its products, and offering to exchange for its products not found to move readily at the prices fixed by it, other articles;

(*c*) Threatened to, and did, withdraw quantity discounts theretofore extended to jobbers, due to their failure to conform to prices fixed by it; but

(*d*) Allowed certain favored jobbers who had given assurances of cooperation and price maintenance, an additional discount for so doing; and

(*e*) By offer of various benefits sought to induce dealers who had been reported to it by its salesmen and customer dealers as being price cutters, to refrain from further price cutting;

With the intent and effect of bringing about a cooperative working arrangement between it and a large number of its customers, and a general maintenance of the resale prices fixed by it:

Held, That the use of such a plan or system of price maintenance, under the circumstances set forth, constituted an unfair method of competition.

AMENDED COMPLAINT.

Acting in the public interest 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 charges that Prichard & Constance, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York with its office and principal place of business in the city of New York in said State. It is, and at all times hereinafter mentioned has been, engaged in the manufacture of cosmetics and toilet articles, and the sale thereof to jobbers, wholesalers, and retailers throughout the United States. It causes its product so sold to be transported from its said place of business in the city of New York to said purchasers at various points in various States of the United States. In the course and conduct of its said business respondent continuously has been and now is in competition with other persons, partnerships, and corporations similarly engaged in the sale of cosmetics and toilet articles in interstate commerce and with the trade generally.

PAR. 2. For more than five years last past the respondent has adopted and employed, and still employs, a system of fixing and maintaining certain specified standard prices at which the articles manufactured and sold by it shall be resold by jobbers, wholesalers, and retailers to the consuming public, and in pursuance of this purpose it has adopted and pursued the following practices:

PAR. 3. It has offered and given special discounts and bonuses to (1) jobbers and wholesalers, and (2) retailers, respectively, on the condition and in consideration of promises by them that they would maintain resale prices which the respondent named and requested them to observe, and has solicited from (1) jobbers and wholesalers, and (2) retailers, assurances and promises in writing that they would maintain such resale prices, and has sold its products and merchandise at such discounts and bonuses as aforesaid, to (1) jobbers and wholesalers, and (2) retailers, respectively, who have promised to maintain such resale prices, and has refused to sell its products and merchandise at such discounts and bonuses to jobbers and wholesalers and retailers who have not promised to maintain such resale prices.

PAR. 4. It has cooperated with jobbers, wholesalers, and retailers and has sought their cooperation to carry into effect a system of maintaining resale prices named by respondent, by the following means, by which respondent and its distributors, customers, and agents have undertaken to prevent others from obtaining the respondent's products at less than the prices designated by it:

(*a*) Inviting reports from customers and dealers, wholesale and retail, of competitors who cut its resale prices;

(*b*) Using the information in such reports to induce such price cutters to maintain its resale prices, by pointing out that the special terms in the form of discounts and bonuses offered by it to dealers who maintain its resale prices, are given by it only to those who maintain its resale prices and in consideration of so maintaining them;

(*c*) Employing salesmen or agents to assist in such scheme of resale price maintenance by reporting dealers who do not observe such resale prices, and

(*d*) Other equivalent cooperative means to maintain its resale prices.

PAR. 5. The acts of respondent alleged in the two last preceding paragraphs tend to constrain all jobbers, wholesalers, and retailers handling the respondent's products and merchandise to sell the same uniformly at the prices fixed by respondent, to retailers and to the public, and to prevent them from selling such products and merchandise at such lower prices as they deem to be adequate and warranted, and are adequate and warranted, by their respective selling costs and efficiency, and thus tend to suppress competition in the sale of said products and unduly to hinder and obstruct the free and natural flow of commerce in the channels of interstate trade, and tend to enhance the cost of such products to the public.

PAR. 6. The above alleged acts and things done by respondent 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 entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress approved September 26, 1914 (38 Stats. 717), the Federal Trade Commission issued and served a complaint upon the respondent, Prichard & Constance, Inc., 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 by its attorney John J. Egan, by Andrew D. Sharp, and having filed its answer, and testimony having been taken before an examiner of the Federal Trade Commission, and evidence having been introduced on behalf of the Commission and on behalf of respondent, argument having been waived, the Commission having duly considered the record, 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. Prichard & Constance, Inc., the respondent, is a corporation organized under the laws of the State of New York, with its office and principal place of business in the city of New York in said State. It is, and has been since 1912 engaged in the manufacture of cosmetics and toilet articles and in the sale thereof to jobbers and retailers throughout the United States. It causes its products so sold to be transported from its place of business in the city of New York to purchasers of its said products at various points in various States of the United States, and is engaged in interstate commerce and is, and has been in competition with other persons, partnerships and corporations similarly engaged in the sale of cosmetics and toilet articles in interstate commerce.

PAR. 2. The respondent at the inception of its business sold its products direct to retailers and did not sell to jobbers, but as its business enlarged and as its products increased in popularity a demand was created among the jobbers for the products of the respondent and the respondent opened accounts with jobbers in various States but continued to also sell direct to retail dealers, and on May 18, 1922, at the time of the issuance of the amended complaint and for more than two years prior thereto, respondent was selling its products to both jobbers and to retailers.

PAR. 3. In connection with the sale of its products, respondent has, from time to time, issued price lists, which lists set forth the prices at which the various articles manufactured and sold by the respondent were to be sold to the ultimate consumer, and in selling to jobbers or retailers, respondent computed its prices by allowing certain discounts from the prices shown in these lists. The early discounts allowed retailers were 25% and 10% off list, plus 2% for cash, plus an additional 5% for quantity, and such discounts remained in force until on or about April, 1922, when respondent changed same to a flat 33⅓% off lists.

In selling to jobbers, respondent computed its prices by allowing a regular discount of 15% off the dealers' price in addition to which it gave jobbers extra discounts of 10% and 2% on 5 gross lots, and 10% and 5% on 25 gross lots. These discounts to jobbers remained in effect up to and until September 1st, 1920.

PAR. 4. Some time during 1913, respondent issued a leaflet, pasted in an illustrated catalogue, which was circulated by it through the mail to retail customers of the respondent in the various States. In said leaflet appeared the following language:

TO THE TRADE

> This List shows what we have done in the production of artistic, appealing preparations. We undertake to create equally new and successful specialties under retailer's own title.

The prices are the minimum retail prices for the British Isles, America and France respectively, and the acceptance of our *invoice constitutes a contract to maintain them.*

WHOLESALE RATES.	25% from Retail Prices.
Additional	10% in dozen quantities.
do	5% off invoices over $75.00 net.

Two per cent for cash in 10 days or net 30 days.

N. B. Additional Discounts will not be allowed unless the published retail prices are maintained.

Less quantities than $\frac{3}{12}$ dozen at Retail Prices.

In order to secure the cooperation of its retail dealers in the maintenance of the resale prices announced by respondent, it put into effect a system of giving bonuses, in the form of free goods, and in its circulars, announcing such bonus offers, used the following language:

In order to secure the cooperation of Retailers with a view to the prevention of price cutting we shall henceforth distribute a monthly bonus of 10% in goods to those dealers who maintain full prices and whose purchases amount to over $30.00 net monthly. This bonus will be payable in any of our products agreeable to the dealer. We wish to emphasize the point that this Bonus has no relation to the purchase price of our goods, it is simply payment on our part in order to secure dealer good will. Price cutting is an unmixed evil.

We take this opportunity of thanking you for cooperation in the past which we trust shall be merited in the future and remain.

Thereafter, respondent adopted, and enclosed to retail customers with invoices for merchandise sold by it to retailers, the following form letter:

BONUS FOR PRICE MAINTENANCE.

GENTLEMEN: We are this day forwarding merchandise recently ordered by you via invoice herewith.

Included in the case you will find bonus of ____________ on the above purchase which amounts to ____________.

While this bonus reduces the cost of our merchandise to you, we wish to emphasize the fact that it is intended as a payment on our part for price maintenance. Price cutters will not receive bonuses until we have their written assurance that they will maintain the price of AMAMI Perfumery products.

There are so many manufacturers who are indifferent as to whether their products are cut or not that we feel confident that when our bonus system becomes thoroughly understood, our products will no longer be cut in price.

We wish to thank you for ______ cooperation in the past and remain.

Hundreds of copies of this circular were forwarded by respondent to retail dealers during the years 1919 and 1920 and up to and until on or about April, 1922, when said circular was discontinued.

In another circular issued by respondent to its retail trade, the following language was used:

> AMAMI PERFUMERY is not for sale to dealers who cut the retail prices. We give Retailers the same terms as Jobbers which enables us to control the situation.

When respondent received information that any retailer was reselling its products at less than the prices fixed by it, it addressed to such alleged price cutter a form letter in the following terms:

> DEAR SIR: We have received a letter from one of your neighbors this morning to the effect that you sell our AMAMI Shampoo at $.10 per envelope, whereas AMAMI Shampoo retails at $.15 an envelope or $1.00 per carton.
>
> There are so many manufacturers who don't care much whether their goods are cut or not that we feel sure that you would be willing to cooperate with us in maintaining the prices of our articles.
>
> If at any time you feel that you can not dispose of any of our items at the nominal prices, we shall be glad to exchange same for more saleable items.
>
> We enclose a stamped, addressed envelope. Will you kindly let us know whether or not you are willing to cooperate with us in PRICE MAINTENANCE?
>
> With compliments, we remain,

During the year 1920 and 1921, respondent, in writing retail customers, in many letters used the following language:

> While this bonus reduces the cost of our merchandise to you, we wish to emphasize the fact that it is intended as a payment on our part for price maintenance. Price cutters will not receive bonuses until we have their written assurance that they will maintain the prices of AMAMI PERFUMERY products.

On the invoices sent dealers during this period, the bonus goods were listed as "Bonus for Price Maintenance."

PAR. 5. To many of the letters, above described, respondent received replies from its retail customers, in which replies the customers promised and agreed to maintain the resale prices as announced by respondent, and to cooperate with respondent in the carrying out of its resale price system.

PAR. 6. Pursuant to the bonus offers above set forth, respondent did, during the years 1919, 1920, and 1921, and up to and until on or about April, 1922, give bonuses in the form of free goods, to customers from whom it had received assurances of cooperation and who had agreed with respondent to maintain the prices fixed by it; and to at least one dealer who declined to give such assurance such bonus was refused.

PAR. 7. On or about April, 1920, respondent found that certain jobbers were underselling the respondent with some of its retail customers, and during April, 1920, respondent circularized the jobbing trade, such circular letters reading as follows:

APR. 5, 1920.

GENTLEMEN: Recently we have received numerous complaints from out of town retailers and jobbers that they could purchase AMAMI Henna Shampoo more cheaply from New York jobbers than from ourselves; our own road salesmen have made similar complaints to the effect that they are undersold by New York jobbers.

The story of price cutting has been told over and over again and we are not going to go over it again in this letter. With the present high cost of doing business, however, price cutting is now not only unfair competition, it is suicidal.

As you know, our jobber's discounts of 15% and 2% are about eaten up with your cost of turning the goods over while our quantity discounts of 15%, 10%, and 2% for five gross quantities and 15%, 10%, and 5% for twenty-five gross quantities are made with the idea of making it really worth while for jobbers to handle our stuff and not to serve as an extra margin to allow price cutting.

An out of town jobber has written to us that we should not allow an extra discount to quantity purchasers as thereby the latter are enabled to undersell to the local jobber's trade, using our item as a leader to secure an account.

We have repeatedly received assurances of price maintenance from New York jobbers although price cutting complaints have not abated; therefore we shall be compelled to revert to a straight 15% and 2% jobber's discount if our request for price maintenance is ignored.

Trusting to hear from you in the affirmative, we remain.

On June 24, 1920, the respondent wrote E. J. Barry, a jobber in New York City, and said letter read as follows:

We wish to draw your attention to your catalogue as mailed to dealers quoting AMAMI HENNA SHAMPOO at $7.50 per dozen cartons, less 10%, which is 14c. per dozen below the jobber's price, this notwithstanding your written assurance to us, dated April 7, that the conditions contained in our letter of April 4 were satisfactory to you, namely that you would uphold the full wholesale price of our products.

We are aware of the uncertain interpretation of the laws regarding price cutting, and while we are not sure whether we would be within our rights in discriminating against price cutters, we do know that we shall abolish the quantity discounts to jobbers unless they as a whole refrain from cutting the price of our goods.

Since we circularized the jobbing trade in April, we have had no complaint regarding any other jobber save yourself.

Will you kindly let us know whether we may or may not expect your cooperation in the distribution of our goods at standard prices?

Respondent's request as contained in its circular letter of April, 1920, was ignored in certain quarters, and during the latter part of August, 1920, it gave notice to the trade in the form of a circular letter that the discounts allowed to the jobbing trade on and after September 1, 1920, would be only 15% and 2%. Said notice was worded as follows:

> GENTLEMEN: On April 5th, 1920, we issued a circular letter to the Jobbing Trade requesting them to desist from using the quantity discounts to cut the wholesale price of AMAMI Shampoo, and notifying them that in self-defense we would be compelled to eliminate these quantity discounts if price cutting were persisted in.
>
> We regret to state that in certain quarters our request was ignored, therefore, kindly note that after September 1, 1920, the jobbing discounts on AMAMI Shampoo in any quantity will be 15% and 2% cash in ten days.
>
> Your attention will oblige.

The evidence shows that the policy enunciated in these letters was the policy of the company and that respondent had received repeated assurances of price maintenance from jobber customers.

PAR. 8. The evidence further shows that subsequent to September 1, 1920, respondent did allow certain favored jobbers, who had given it assurances of cooperation and maintenance of its fixed prices, an additional discount of 10%; said discount in some instances being a straight discount for price maintenance—in others, masked in the guise of a compensation to the jobber for advertising.

PAR. 9. This selling policy or system of merchandising, established by the respondent, through contracts and agreements with customers, and through the payment of bonuses for price maintenance to those giving assurances of cooperation, and the refusal of such bonuses to those declining to give such assurances, was intended by the respondent to, and had the effect of bringing about a cooperative working arrangement between the respondent and a large number of its customers, and resulted in the general maintenance of the resale prices fixed by respondent in its said lists.

PAR 10. The evidence establishes the fact that salesmen of the respondent and dealers who were cooperating with the respondent in the maintenance of resale prices reported to the respondent from time to time dealers who were not maintaining the resale prices fixed by the respondent, and that the respondent endeavored to induce such customers as had been reported to it as being price cutters to refrain from such practice and to sell the products of the respondent at the prices fixed by the respondent, but these endeavors were limited for the most part to offers of various benefits if the said customers would agree to maintain the resale prices fixed by the respondent.

PAR. 11. The respondent did not as a means of carrying out its attempts to maintain resale prices actually refuse to sell to price cutters. The evidence developed only one instance in which the respondent declined to sell to a price cutter.

CONCLUSION.

That the methods of competition set forth in the foregoing facts are in the circumstances therein set forth 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 pleadings, testimony, and evidence received by an examiner duly appointed by the Commission, and the brief prepared by counsel for the Commission, 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, Prichard & Constance, Inc., its officers, directors, agents, servants, and employees, cease and desist from employing or carrying into effect any selling policy or system of merchandising, whereby respondent through cooperation with its customers, fixes or controls, or undertakes to fix or control the prices at which its products shall be resold by others—more particularly, through any of the following means:

1. By giving or offering to give special discounts, bonuses or terms of sale, to jobbers or retailers, conditional upon their observance of or promise to observe the resale prices fixed by respondent.

2. By otherwise contracting or entering into agreements or understandings with jobbers or retailers, providing for the maintenance of such prices.

3. By cooperation with its customers in establishing or maintaining a system of resale prices.

4. By utilizing any other cooperative means, directly or indirectly, to bring about the maintenance of the resale prices fixed by respondent.

FEDERAL TRADE COMMISSION
v.
KING-FERREE COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 995—July 9, 1923.

SYLLABUS.

Where it had been long known that cigars manufactured at Tampa, Fla., were largely composed of tobacco imported from Havana, Cuba, and such cigars had come to be widely and favorably known and generally referred to as "Tampa cigars"; and thereafter a corporation engaged elsewhere in the manufacture and sale of cigars not composed principally of tobacco imported from Havana, applied to its product, in the labeling and advertising thereof, the word "Vantampa" (a coined word arrived at by combining the letters v-a-n from "Havana" with the word "Tampa"); with the effect of misleading and deceiving a substantial part of the purchasing public:

Held, That the use of such labels and legends, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that King-Ferree Company, Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of North Carolina and having its principal place of business in the city of Greensboro, in said State, and for more than one year last past has been and still is engaged in the business of manufacturing and selling cigars. Said respondent in the course of its said business causes said cigars when sold to be transported from the State of North Carolina through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent has for more than one year last past made a practice and still makes a practice of placing on containers of cigars manufactured by it at Greensboro in the State of North Carolina, as aforesaid, labels bearing the following legend:

Strictly Long Filler
Hood's
VANTAMPA
The Perfect Cigar

and has made use of other labels bearing the said name "Vantampa" and placed the same on boxes containing cigars manufactured by said respondent as aforesaid. Said respondent has also advertised under the name "Vantampa" said cigars manufactured by it at Greensboro in the State of North Carolina as aforesaid, in various newspapers having a general circulation in the State of North Carolina and in the adjoining States and generally throughout the United States. Cigars have for many years been manufactured in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as the Tampa District, and such cigars are frequently referred to as Tampa cigars. Such cigars have been and are manufactured principally from tobacco imported from Havana, Cuba, and generally known and referred to as Havana tobacco, and cigars made in said city and district of Tampa have acquired a wide and favorable reputation and are generally considered to be the best cigars manufactured of Havana tobacco, with the exception of those made at Havana, Cuba, by reason of similarity of climate and labor conditions.

PAR. 3. The cigars manufactured by respondent upon which said brands and labels have been and are placed by it and which have been advertised by it, as aforesaid, were not made in the city of Tampa, Fla., or in the district known as the Tampa District, and the use of said brands and labels and of said advertising by respondent was intended to and did signify to the purchasing public that said cigars had in fact been manufactured at Tampa, Fla., or in the Tampa District aforesaid.

PAR. 4. The name "Vantampa" used by respondent in connection with said cigars and in advertising the same, as above described, has been and is understood by a substantial part of the purchasing public to signify that said cigars were manufactured in the city of Tampa or in the Tampa District in the State of Florida, and were composed principally of tobacco imported from Havana, Cuba, and said brands and labels and said advertising have the capacity and tendency to mislead and deceive the purchasing public, into the belief that said cigars so branded, labeled, and advertised were in fact Tampa cigars as such term is generally understood, and were manufactured from Havana tobacco, and to induce them to purchase the same in that belief.

PAR. 5. The above 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.

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, King-Ferree Company, Inc., 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 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 the case and in lieu of testimony, and proceed forthwith to make its findings as to the facts and such order as it may deem proper to enter therein, without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission, 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 is a corporation organized under the laws of the State of North Carolina and having its principal place of business in the city of Greensboro, in said State, and for more than one year last past has been and still is engaged in the business of manufacturing and selling cigars. Said respondent in the course of its said business causes said cigars when sold to be transported from the State of North Carolina through and into other States of the United States to the purchasers thereof, and carries on said business in direct active competition with other individuals, partnerships, and corporations, similarly engaged. That the officers of the respondent are J. G. Hood, president; W. W. Fife, vice president; and E. A. Hood, secretary and treasurer.

PAR. 2. Respondent has for more than one year last past made a practice and still makes a practice of placing on containers of cigars manufactured by it at Greensboro, in the State of North Carolina, as aforesaid, labels bearing the following legend:

Strictly Long Filler
Hood's
VANTAMPA
The Perfect Cigar

and has made use of other labels bearing the said name "Vantampa" and placed the same on boxes containing cigars manufactured by said respondent as aforesaid. Said respondent has also advertised under the name "Vantampa" said cigars manufactured by it at Greensboro, in the State of North Carolina, as aforesaid, and in various newspapers having a general circulation in the State of North Carolina.

PAR. 3. That for more than thirty years cigars have been manufactured in the city of Tampa, Fla., and in the territory immediately surrounding said city and known as Tampa District; that such cigars are known and referred to as Tampa cigars and are manufactured pricipally from tobacco imported from Havana, Cuba; and that such cigars, made in said city and district of Tampa, have acquired a wide and favorable reputation.

PAR. 4. That the cigars manufactured and sold by respondent, upon which the labels and legends described in paragraph 2 hereof have been and are placed by it, were not made in the city of Tampa or in the Tampa District, so-called, in the State of Florida, nor composed pricipally of tobacco grown in and imported from Havana, Cuba.

PAR. 5. That the word "Vantampa" was coined by the respondent and is a combination of the letters v, a, and n—van (being the middle syllable of the word "Havana") with the word "Tampa."

PAR. 6. That the word "Vantampa" in the labels and legends used by the respondent on the cigars or the containers thereof is understood by a substantial part of the purchasing public to mean and indicate that said cigars were manufactured in the city of Tampa, or in the Tampa District, in the State of Florida, and are composed principally of tobacco grown in and imported from Havana, Cuba.

PAR. 7. That many of respondent's competitors are engaged in the manufacture and sale of cigars to persons in States other than those in which their principal factories and places of business are located, and in causing such cigars to be transported from the States in which their principal factories or places of business are located through and into other States of the United States, pursuant to such manufacture and sales. That many of the respondent's competitors have manufactured, sold, and shipped, and are now manufacturing, selling, and shipping, in said commerce between the States of the United States, cigars which are manufactured in the city of Tampa, or in the Tampa District, in the State of Florida, and principally from tobacco imported from Havana, Cuba, which cigars and the containers thereof bear labels, brands, and advertising matter containing the word "Vantampa" alone or in connection with other words and phrases.

PAR. 8. That the labels, brands, and legends containing the word "Vantampa" used by respondents upon cigars and the containers thereof manufactured, sold, and shipped by them, all as set forth in the foregoing findings, have the capacity and tendency to and do mislead and deceive a substantial part of the purchasing public into the belief that such cigars are manufactured in the city of Tampa, or Tampa District, in the State of Florida, and are in fact Tampa cigars, as such term is generally understood.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, 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 power 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 answer and agreed statement of facts filed herein, 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 King-Ferree Company, Inc., its officers, agents, representatives, servants and employees, do cease and desist from—

Using the word "Vantampa" alone, or in combination with other words, in brands, labels, or legends on cigars, and the containers thereof, manufactured by it in Greensboro, N. C., or any other place than the city of Tampa, Fla., or the Tampa District, so-called, unless if the cigars in fact are not made in Tampa, Fla., or the

Tampa District, such word or words are followed by words in type or lettering equally conspicuous with the word "Vantampa" which state the true place of manufacture.

It is further ordered, That the respondent, King-Ferree Company, Inc., shall within sixty (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.

FEDERAL TRADE COMMISSION

v.

PHILIP MOSKOWITZ, TRADING UNDER THE NAME AND STYLE OF ROCHESTER CLOTHING COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 826—July 11, 1923.

SYLLABUS.

Where more of the high-grade clothing for men had long been made in Rochester, N. Y., than in any of the other principal centers of such manufacture, and the clothing manufacturers and business organizations thereof and the municipality itself had so advertised clothing there made, and so featured in slogans and otherwise the idea of quality in connection with Rochester-made products, that the word "Rochester" as applied to clothing had come to mean to the trade and the purchasing public goods of a high standard of quality, there made, and a valuable good will had become attached to the name "Rochester"; and thereafter a competing manufacturer, located elsewhere, well knowing the aforesaid facts,

(a) Labeled his clothing "Trade-Mark, Rochester Clothing Co.—For Particular Men"; and

(b) Used such legend in the conduct of his business, and in his advertisements, stationery and billheads;

With a capacity and tendency thereby to mislead and deceive the trade and the purchasing public into believing his clothing to have been made in Rochester, N. Y., and with the effect of so doing in the case of a part of said public:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Philip Moskowitz, trading under the name and style of Rochester Clothing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is engaged in New York, N. Y., in the business of manufacturing and selling clothing for men and boys, and causes clothing sold by him to be transported to the purchasers thereof, from the State of New York through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of his business as described in paragraph 1 hereof, places on clothing manufactured by him in New York, N. Y., tags or labels containing the words "Trade Mark, Rochester Clothing Co. for particular men," with the abbreviation "Co." inconspicuous, so that the casual observer would be likely to see only the words "Rochester Clothing for particular men" and which labels contain no other distinguishing marks to show the true place of origin of said clothing; that clothing for men and boys has been manufactured in large quantities in Rochester, N. Y., for a long period of time; that clothing and other products manufactured in Rochester, N. Y., have been given widely extensive advertising by the manufacturers operating in that City and by the Chamber of Commerce and other Associations of business men of that City, in which advertising the words "Rochester," "Made in Rochester," "Tailored in Rochester," have been featured together with the claim that "Rochester-made means quality" and that clothing made in Rochester is not made by "Sweat Shop methods," and as a result of such advertising the word "Rochester" when used in connection with clothing for men and boys, has come to be understood by the trade and consuming public as indicating that such clothing was made in Rochester, N. Y., and is of the quality which in the mind of the consuming public, as a result of such advertising, has become associated with clothing for men and boys actually manufactured in Rochester, N. Y., and labeled and advertised as having been manufactured in that City; that the use by respondent of the word "Rochester" in labels placed on clothing manufactured in New York, N. Y., and sold by him as aforesaid, is calculated to and does deceive the purchasing public, and such labels have been and are being used by respondent as a means of enabling him to pass off clothing not in fact made in Rochester, N. Y.

PAR. 3. That by reason of the facts recited, the respondent is using an unfair method 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.

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 respondent, Philip Moskowitz, trading under the name and style of Rochester Clothing Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, Philip Moskowitz, entered his appearance by his attorney, Monroe E. Miller, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of the complaint and the answer before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and having duly considered the record 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. The respondent, Philip Moskowitz, is an individual trading under the firm name and style of Rochester Clothing Company, having his main office and place of business at 853 Broadway, New York City, in the State of New York, and has been for ten years past, and is now, engaged in New York City in the business of manufacturing and selling clothing for men and boys; and causes clothing sold by him to be transported to the purchasers thereof, from the City of New York, in said State, through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. The city of Rochester, N. Y., takes its name from Nathaniel Rochester, who settled in that locality about the year 1812 as a land commissioner; it is located on the Genesee River at the Falls, which supplied power for flour mills which formerly gave the city the name of the "Flour City," and have contributed to its industrial development. In 1916 Rochester had a population of approximately 250,000; in 1920 the population was 295,850; there were 1,657 factories, employing about 80,000 persons. Since the year 1850, and more particularly since the year 1865, clothing for men has been manufactured at Rochester, and the industry has had a continuous growth in the number of factories and the amount of capital invested. Besides Rochester, the principal centers of the manufacture of men's and boys' clothing in the United States are Chicago, New York City, Philadelphia, and Baltimore; three grades of clothing are generally recognized by the trade, viz, high-grade, medium and cheap, low-grade clothing. Compared with the output of men's clothing in the places named, that of Rochester has, and has had for many years, the largest proportion of high-grade clothes under that classification. The development of the men's clothing industry in Rochester has been marked by the adoption early and progressively of improved methods and conditions of manufacture; so-called sweat-shop conditions have been practically unknown, and the factory system, including the careful supervision of skilled employees, was generally established there, at an early period, and has been highly developed. The early labor in the industry consisted largely of German tailors resident in Rochester, in whose families the craft was continued through successive generations. As the labor became more skilled, commanding higher pay, it was applied more profitably to the higher grade of product, increasing that class proportionately.

PAR. 3. In 1892 the manufacture of men's clothing had become foremost among Rochester's industries; at that time about thirty large firms were engaged in it, and their product was manufactured under the most healthful conditions and by highly skilled labor, and enjoyed a high reputation throughout the United States. In that year the value of the annual output was estimated to be about $13,000,000. In 1916 it was approximately $25,000,000 and in 1920 had increased to $55,000,000. About the year 1895 the Clothier's Exchange was organized in Rochester, the membership of which is made up of clothing manufacturers of that city, the purpose being primarily the prevention of labor troubles and the adjustment of labor disputes, and generally to promote the interests and improve the conditions of the industry; one of the activities of said Clothier's Exchange was to protect the reputation of Rochester as a clothing market against the use of the name by manufacturers elsewhere to its prejudice; the Clothier's Exchange has cooperated with the Chamber of Commerce of Rochester in advertising and fostering the reputation of Rochester for the manufacture of high-grade clothing for men and boys; the exchange has published a pamphlet entitled "Rochester—The Clothing Market," which is mailed out by the thousands to retailers and wholesalers of men's clothing throughout the country.

PAR. 4. The Chamber of Commerce of Rochester, N. Y., has some 4,200 members; its activities are directed to making the city a better place in which to live and do business, and promoting its civic, industrial, and mercantile interests. A slogan or motto, "Rochester Made Means Quality" was adopted in connection with the first industrial exposition held at Rochester in 1908; this industrial exposition was inaugurated and conducted by the Chamber of Commerce for several years, and was then taken over by the city government of Rochester. The slogan referred to has been extensively used by the city of Rochester and the Chamber of Commerce and the many and varied interests of the city, including clothing manufacturers, in many forms of advertising, e. g., billheads, checks, stationery, pamphlets, convention and exposition publications, and in such forms widely distributed so that it has become nationally known; in 1913 the Chamber of Commerce caused to be erected at the western and eastern lines of the city of Rochester, on the right-of-way of the New York Central tracks, large electric signs showing the Genesee Falls and the city of Rochester, and bearing the sentence, "Where Quality Dominates."

PAR. 5. In addition to the contribution to its reputation as a center of manufacture of men's clothing by organizations such as the Chamber of Commerce and the Clothier's Exchange, a number of the chief manufacturers in Rochester of men's clothing have for many years maintained a system of national advertising in newspapers and magazines throughout the country; some of these have made conspicuous the identity of their products with the city of Rochester, and all have served to spread the knowledge of Rochester as an important center of the clothing industry; retailers in turn throughout the country who handle the product of the various manufacturers above referred to, have displayed in their advertisements in newspapers in their respective localities the names and brands of the manufacturers whose goods they handle, and have thus aided in spreading the knowledge of their identification with the city of Rochester. The efforts heretofore described of organizations and individuals to spread the reputation of Rochester as an industrial center whose product generally was of a high quality, and particularly such reputation of the men's clothing industry, have had the result and effect of establishing a reputation for men's clothing made in Rochester, generally, throughout the country, in the minds of jobbers, wholesalers, and retailers, and the purchasing public, that it is generally of a superior quality and value in quality, style, workmanship, and reliability; and the name "Rochester," applied to their products has become of great value to the manufacturers of men's clothing in Rochester because of the secondary meaning to the trade and the public which it has acquired largely through their efforts, and has been and now is a substantial asset standing for excellence of quality and workmanship and corresponding good will.

PAR. 6. The name "Rochester," when used on labels or tags attached to, or as a brand for, clothing for men and boys, is understood generally by the trade and the purchasing public as indicating that such clothing was made in Rochester, N. Y.

PAR. 7. The respondent, in the course of his business, as set forth in paragraph 1 above, has attached to clothing manufactured by him in New York City, N. Y., and sold by him in interstate commerce, tags or labels containing the words " Trademark, Rochester Clothing Co.—For Particular Men," without distinguishing words or marks to show the place of manufacture of said clothing, and has used the legend in the conduct of his business, in advertisements, stationery, and billheads. Respondent was well informed of the wide and favorable reputation enjoyed by the men's clothing industry of Rochester, N. Y., for producing high-grade clothing for men, and that the said city of Rochester, N. Y., was known, through its wide advertising and the excellence of the men's clothing produced there, to the public and dealers in men's clothing throughout the United States, as the location of a large number of the largest and most widely and favorably known clothing manufacturers in the United States.

PAR. 8. The use by respondent, as described in paragraph 7 hereof, of the words, "Trademark—Rochester Clothing Co.—For Particular Men," in tags or labels on clothing manufactured by him in New York City, N. Y., and sold by him in interstate commerce, and the use of the same legend by respondent in his advertisements and on stationery and billheads, is calculated to and tends to mislead and deceive the trade and the purchasing public, and does mislead and deceive a part of the purchasing public, into believing that clothing manufactured by him in New York City, N. Y., is manufactured in Rochester, N. Y.

PAR. 9. The use by respondent of the word " Rochester " in tags or labels on clothing manufactured by him elsewhere than in Rochester, N. Y., and sold by him in interstate commerce, is calculated to and tends to mislead and deceive the trade and purchasing public, and does mislead and deceive a part of the purchasing public into believing that such clothing is manufactured in Rochester, N. Y.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 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 testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the 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, Philip Moskowitz, individually and trading under the name of Rochester Clothing Company, his partners, agents, servants, representatives, and employees, do cease and desist from:

1. Using on tags or labels on clothing manufactured in New York City, N. Y., or any place other than Rochester, N. Y., and sold and shipped, or sold for shipment, in interstate commerce, the words "Rochester Clothing Company," or the word "Rochester" alone or in combination with other word or words, unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words, "Made in New York City," if the clothing is, in fact, made in New York City, N. Y., or by words in which the true place of manufacture, town or city and State, is stated.

2. Displaying or using the words or brand "Rochester Clothing Company" on stationery and billheads used in the business of making, selling, and shipping, or selling for shipment, clothes in interstate commerce, or in advertising clothes made elsewhere than in Rochester, N. Y., in newspapers, trade journals, or elsewhere, unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words "Made in New York City, N. Y.," if the clothing in fact is made in New York City, N. Y., or by words in which the true place of manufacture, town or city and State, is stated.

3. Using any tags or labels on clothing manufactured in New York City, N. Y., or any other place than Rochester, N. Y., and sold and shipped, or sold for shipment in interstate commerce, or displaying or using on stationery and billheads used in the business of making, selling, or shipping, or selling for shipment, such clothing, or in advertising such clothing in newspapers, trade journals, or elsewhere, in interstate commerce, the words "Rochester Clothing Company," or the word "Rochester" alone or in any combina-

tion of words, for goods other than those stated in the preceding paragraph, unless in connection therewith and with equal prominence appear the words, "Made in New York City, N. Y.," or a like statement according to the facts as to the place or places of the manufacture of respondent's product or of clothing sold by him; and from representing in any manner or form whatever, that clothing made elsewhere than in the city of Rochester, N. Y., is made in said city.

It is further ordered, That the respondent, Philip Moskowitz, trading under the name and style of Rochester Clothing Company, shall, within sixty (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.

FEDERAL TRADE COMMISSION
v.
SAMUEL BLUM.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 827—July 11, 1923.

SYLLABUS.

Where more of the high-grade clothing for men had long been made in Rochester, N. Y., than in any of the other principal centers of such manufacture, and the clothing manufacturers and business organizations thereof and the municipality itself had so advertised clothing there made, and so featured in slogans and otherwise the idea of quality in connection with Rochester-made products, that the word "Rochester" as applied to clothing had come to mean to the trade and the purchasing public goods of a high standard of quality, there made, and a valuable good will had become attached to the name "Rochester"; and thereafter a competing manufacturer, located elsewhere, well knowing the aforesaid facts,

(a) Labeled his clothing "High Class Tailored Rochester Art Clothes"; and

(b) Used such legend in the conduct of his business, and in his advertisements, stationery and billheads;

With a capacity and tendency thereby to mislead and deceive the trade and the purchasing public into believing his clothing to have been made in Rochester, N. Y., and with the effect of so doing in the case of a part of said public:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Samuel Blum, hereinafter referred to as respondent, has been and is using unfair methods of competition 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent is engaged in New York, N. Y., in the business of manufacturing and selling clothing for men and boys, and causes clothing sold by him to be transported to the purchasers thereof, from the State of New York through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of his business as described in paragraph 1 hereof, places on clothing manufactured by him in New York, N. Y., tags or labels containing the words "High Class Tailored Rochester Art Clothes," without other distinguishing marks to show the true place of origin of said clothing; that clothing for men and boys has been manufactured in large quantities in Rochester, N. Y., for a long period of time and by reason of widely extensive advertising of such clothing and other products manufactured in Rochester, N. Y., by the manufacturers operating in that city and by the Chamber of Commerce and other associations of business men of that city, in which advertising the words "Rochester," "Made in Rochester," "Tailored in Rochester," have been featured together with the claim that "Rochester-made means quality," and that clothing made in Rochester is not made by "Sweat Shop" methods, and as a result of such advertising the word "Rochester" when used in connection with clothing for men and boys, has come to be understood by the trade and consuming public as indicating that such clothing was made in Rochester, N. Y., and is of the quality which in the mind of the consuming public, as the result of such advertising, has become associated with clothing for men and boys actually manufactured in Rochester, N. Y., and labeled and advertised as having been manufactured in that city; that the use by respondent of the word "Rochester" in labels placed on clothing manufactured in New York, N. Y., and sold by him, as aforesaid, is calculated to and does deceive the purchasing public, and such labels have been and are being used by respondent as a means of enabling him to pass off clothing not in fact made in Rochester, N. Y.

PAR. 3. That by reason of the facts recited, the respondent is using 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.

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 respondent, Samuel Blum, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondent, Samuel Blum, entered his appearance by his attorney, Samuel Cohen, and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of the complaint and the answer, before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, and the Commission having heard argument of counsel and having duly considered the record, 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 Samuel Blum had, for ten years prior to June, 1920, been engaged in the city of New York in the business of manufacturing and selling, and shipping in interstate commerce, clothing for men, in active competition with other persons, partnerships, and corporations similarly engaged; at the time of the issuance of the complaint herein he was engaged and is now engaged in the business of selling clothing manufactured by him, and shipping the same in interstate commerce in competition with other persons, partnerships, and corporations similarly engaged, his main office and place of business being at 740 Broadway, New York, N. Y.

PAR. 2. The city of Rochester, N. Y., takes its name from Nathaniel Rochester, who settled in that locality about the year 1812 as a land commissioner; it is located on the Genesee River at the Falls which supplied power for flour mills which formly gave the city the name of the "Flour City," and have contributed to its industrial development. In 1916 Rochester had a population of approximately 250,000; in 1920 the population was 295,850; there were 1,657 factories, employing about 80,000 persons. Since the year 1850, and more particularly, since 1865, clothing for men has been manufactured at Rochester and the industry has had a continuous growth in the number of factories and the amount of capital invested. Besides Rochester, the principal centers of the manufacture of men's and boys' clothing in the United States are Chicago, New York City, Philadelphia, and Baltimore; three grades of clothing are generally recognized by the trade, viz, high-grade, medium and cheap, low-grade clothing. Compared with the output of men's clothing in the places named, that of Rochester has, and has had for many years, the largest proportion of high-grade clothes under that classification. The development of the men's clothing industry in Rochester has been marked by the adoption early and progressively of improved methods and conditions of manufacture; so-called sweat-shop conditions have been practically unknown, and the factory system, including the careful supervision of skilled employees, was generally established there, at an early period, and has been highly developed. The early labor in the industry consisted largely of German tailors resident in Rochester, in whose families the craft was continued through successive generations. As the labor became more skilled, commanding higher pay, it was applied more profitably to the higher grade of product, increasing that class proportionately.

PAR. 3. In 1892 the manufacture of men's clothing had become foremost among Rochester's industries; at that time about thirty large firms were engaged in it and their product was manufactured under the most healthful conditions and by highly skilled labor, and enjoyed a high reputation throughout the United States. In that year the value of the annual output was estimated to be about $13,000,000. In 1916 it was approximately $25,000,000 and in 1920 had increased to $55,000,000. About the year 1895 the Clothier's Exchange was organized in Rochester, the membership of which is made up of clothing manufacturers of that city, the purpose being primarily the prevention of labor troubles and the adjustment of labor disputes, and generally to promote the interests and improve the conditions of the industry; one of the activities of said Clothier's Exchange was to protect the reputation of Rochester as a clothing market against the use of the name by manufacturers elsewhere, to its prejudice; the Clothier's Exchange has cooperated with the Chamber of Commerce of Rochester in advertising and fostering the reputation of Rochester for the manufacture of high-grade clothing for men and boys; the exchange has published a pamphlet entitled "Rochester—The Clothing Market," which is mailed out by the thousands to retailers and wholesalers of men's clothing throughout the country.

PAR. 4. The Chamber of Commerce of Rochester, N. Y., has some 4,200 members; its activities are directed to making the city a better place in which to live and do business, and promoting its civic, industrial, and mercantile interests. A slogan, or motto, "Rochester Made Means Quality," was adopted in connection with the first industrial exposition held at Rochester in 1908; this industrial exposition was inaugurated and conducted by the Chamber of Commerce for several years and was then taken over by the city government of Rochester; the slogan referred to has been extensively used by the city of Rochester and the Chamber of Commerce and the many and varied industries of the city, including clothing manufacturers, in many forms of advertising, e. g., billheads, checks, stationery, pamphlets, convention and exposition publications, and in such forms widely distributed, so that it has become nationally known; in 1913, the Chamber of Commerce caused to be erected at the western and eastern lines of the city of Rochester, on the right-of-way of the New York Central tracks, large electric signs showing the Genesee Falls and the city of Rochester, and bearing the sentence, "Where Quality Dominates."

PAR. 5. In addition to the contribution to its reputation as a center of manufacture of men's clothing by organizations such as the Chamber of Commerce and the Clothier's Exchange, a number of the chief manufacturers in Rochester of men's clothing have for many years maintained a system of national advertising, in newspapers and magazines throughout the country; some of these have made conspicuous the identity of their products with the city of Rochester, and all have served to spread the knowledge of Rochester as an important center of the clothing industry; retailers in turn throughout the country, who handle the product of the various manufacturers above referred to, have displayed in their advertisements in newspapers in their respective localities the names and brands of the manufacturers whose goods they handle, and have thus aided in spreading the knowledge of their identification with the city of Rochester. The efforts heretofore described of organizations and individuals to spread the reputation of Rochester as an industrial center whose product generally was of a high quality, and particularly such reputation of the men's clothing industry, have had the result and effect of establishing a reputation for men's clothing made in Rochester, generally, throughout the country, in the minds of jobbers, wholesalers and retailers, and the purchasing public, that it is generally of a superior character and value, in quality, style, workmanship, and reliability; and the name "Rochester" applied to their products has become of great value to the manufacturers of men's clothing in Rochester, because of the secondary meaning to the trade and the public which it has acquired largely through their efforts, and has been and now is a substantial asset standing for excellence of quality and workmanship and corresponding good will.

PAR. 6. The name "Rochester," when used on labels or tags attached to, or as a brand for, clothing for men and boys, is understood generally by the trade and the purchasing public as indicating that such clothing was made in Rochester, N. Y.

PAR. 7. Respondent, in the course of his business as set forth in paragraph 1 above, has placed on clothing manufactured by him in New York City, N. Y., and sold by him in interstate commerce, tags or labels containing the words "High Class Tailored Rochester Art Clothes," without other distinguishing words or marks to show the place of manufacture of said clothing; and has used the same legend in the conduct of his business, in advertisements and on stationery and billheads; respondent was at all times well informed of the wide and favorable reputation enjoyed by Rochester, N. Y., as a market for high-grade clothing for men, and that the city of Rochester was known from its wide advertising to the general public and to dealers in clothing throughout the United States to be the city where there are located a number of the largest and most widely known clothing manufacturers in the United States.

PAR. 8. The use by respondent as described in paragraph 7 hereof of the words "High Class Tailored Rochester Art Clothes," in tags or labels on clothing manufactured by him in the city of New York, and sold by him in interstate commerce, and the use of the same legend by respondent in his advertisements and on stationery and billheads, is calculated to and tends to, mislead and deceive the trade and the purchasing public, and does mislead and deceive a part of the purchasing public, into believing that clothing made by him in New York City, N. Y., is made in Rochester, N. Y.

PAR. 9. The use by respondent of the word "Rochester" in tags or labels on clothing manufactured by him elsewhere than in Rochester, N. Y., and sold by him in interstate commerce, is calculated to and tends to mislead and deceive the trade and purchasing public, and does mislead and deceive a part of the purchasing public into believing that such clothing is manufactured in Rochester, N. Y.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 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 the testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the 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, Samuel Blum, his agents, servants, representatives and employees, cease and desist from—

1. Using on tags or labels on clothing manufactured in New York City, N. Y., or in any other place than Rochester, N. Y., and sold and shipped, or sold for shipment, in interstate commerce, the words or brand "High Grade Tailored Rochester Art Clothes," unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words "Made in New York City, N. Y." if the clothing in fact is made in New York City, N. Y., or by words in which the true place of manufacture, town or city and State, is stated.

2. Displaying or using the words or brand "High Class Tailored Rochester Art Clothes" on stationery and billheads used in the business of making, selling, and shipping, or selling for shipment, such clothes in interstate commerce or in advertising such clothes made elsewhere than in Rochester, N. Y., in newspapers, trade journals, or elsewhere, unless following such words or brand, and in type or lettering equally conspicuous with them, appear the words "Made in New York City, N. Y." if the clothing in fact is made in New York City, N. Y., or by words in which the true place of manufacture, town or city and State, is stated.

3. Using on tags or labels on clothing manufactured in New York City, N. Y., or in any other place than Rochester, N. Y., and sold and shipped, or sold for shipment in interstate commerce, or displaying or using on stationery and billheads used in the business of making, selling, or shipping, or selling for shipment, such clothing, or in advertising such clothing in newspapers, trade journals, or elsewhere, in interstate commerce, the word "Rochester" alone or in any combination of words other than those stated in the preceding paragraph, unless in connection therewith and with equal prominence appear the words "Made in New York City" or a like statement according to the facts as to the place or places of the manufacture of respondent's product or of clothing sold by him; and from representing in any manner or form whatever that clothing made elsewhere than in the city of Rochester, N. Y., is made there.

It is further ordered, That respondent, Samuel Blum, shall within sixty (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.

FEDERAL TRADE COMMISSION
v.
LEXINGTON MANUFACTURING COMPANY, MIDDLESBURG MILLS, AND MILLWOOD CORPORATION.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 875—July 14, 1923.

SYLLABUS.

Where a corporation had for many years applied to high quality bed tickings of uniform weight, quality and pattern made by it, labels containing the letters "A. C. A.," attached to the bottom edge of each bolt, and said tickings as so labeled had come to be well and favorably known to the trade and to the public generally and had become identified in the minds of the trade and a substantial portion of the public as the product of said corporation; and thereafter competitors applied to bolts of their ticking resembling its aforesaid product in pattern and general appearance (but of lighter weight in some cases) labels containing the letters "A. C. A."; with the result that their tickings were sold as and for those of said corporation, and their customer dealers were enabled to sell the same more readily and to obtain higher prices therefor than they otherwise would have been able to do:

Held, That such simulation of a competitor's label, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Lexington Manufacturing Company, Middlesburg Mills, and Millwood Corporation, hereinafter referred to as respondents, have been and now are using unfair methods of competition, in interstate commerce in violation of the provisions 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," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. Respondent Lexington Manufacturing Company is a corporation organized under the laws of the State of South Carolina. It has its office and principal place of business at the town of Lexington in said State, where it is engaged in the manufacture of cotton bed-ticking and other cotton products. The Middlesburg Mills is a corporation organized under the laws of the State of South Carolina with its office and principal place of business at the town of Batesburg in said State, where it likewise manufactures cotton bedticking and other cotton products. Each said respondent for a number of years last past has been and is now engaged in the business of selling bedticking manufactured by it to purchasers resident at various points in various States of the United States and delivers the bedticking so sold by causing the same to be transported from its aforesaid place of business into and through various States of the United States to said purchasers at their several points of residence. In such manufacture and sale of bedtickings each said respondent continuously has been and is now in competition with other persons, firms, and corporations similarly engaged. Respondent, Millwood Corporation, is a corporation organized under the laws of the State of New Jersey with its principal office in the City and State of New York. It is what is commonly known as a holding corporation and owns a controlling amount of the capital stock of respondent Lexington Manufacturing Company and of respondent Middlesburg Mills. The officers of the three respondents are identical, and through them the Millwood Corporation controls and manages the business of respondents Lexington Manufacturing Company and Middlesburg Mills. Respondent Millwood Corporation likewise owns a controlling amount of the capital stock of and similarly controls the business of eight other corporations engaged in the manufacture and sale in interstate commerce of bedticking and other cotton products.

PAR. 2. Among the aforesaid competitors of respondents Lexington Manufacturing Company and Middlesburg Mills is the Amoskeag Manufacturing Company, which has its office and principal place of business at the city of Manchester in the State of New Hampshire. It is and has been for many years engaged in the manufacture and sale of various qualities and grades of bedtickings, among which is a bedticking made by a special process and in a special pattern and design originated by said company. The bedticking so made by such special process always has been and is now the best grade of ticking made by said Company and was named and designated by it "A. C. A." ticking. The symbol "A. C. A." was chosen by said company as an abbreviation of the words "Amoskeag Company's A. quality." Said ticking has for many years borne and now bears said name and designation. Because of the quality and adaptability to purpose of said "A. C. A." ticking, the same became, after its introduction by said company, and still is, popular and in great demand in the trade and amongst the general public and was and is known and identified in the minds of the trade and general public as "A. C. A." ticking. A number of years ago, in order to mark and identify to the purchaser the various grades of tickings made by it, the Amoskeag Manufacturing Company adopted a system of labeling which consists of applying several separate labels to each bolt of bedticking manufactured by it, one of which labels, known as a foot label, is attached near the bottom edge of the bolt in each instance and bears no words or symbols other than a letter or letters adopted by said company to indicate the grade of ticking to which said label is attached. In conformity with this system of labeling and as a part thereof, said company attaches to each bolt of its said "A. C. A." ticking, among other labels, a foot label bearing said symbol "A. C. A." and no other letters, words, or symbols. As a result of said system of labeling, said company's said "A. C. A." ticking is now identified in the minds of the trade and the purchasing public with said foot label bearing said symbol "A. C. A."

PAR. 3. A number of years ago respondent Lexington Manufacturing Company and respondent Middlesburg Mills each began designating, and has continuously since designated, certain bedtickings made by it as "A. C. A." ticking, and adopted the practice of placing upon each bolt of said tickings a system of several labels among which there is a foot label upon which appears the symbol "A. C. A." and no other letters, words, or symbols. The said tickings thus labeled by each said respondent closely simulate the weave and design of the aforesaid "A. C. A." ticking of the Amoskeag Manufacturing Company and are in some instances inferior thereto. Said respondents do not attach said foot label to a specific grade of bedticking, but attach the same to various grades whenever they see fit, or are requested by their dealer-customers so to do.

PAR. 4. The aforesaid practice by respondents Lexington Manufacturing Company and Middlesburg Mills has had in the past and now has the capacity and tendency of misleading and deceiving the trade and the general public into the belief that tickings manufactured by said respondents and by them labeled with a foot label bearing the letters "A. C. A." are identical with said "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company, and of inducing the trade and general public to purchase tickings manufactured by said respondents as and for the "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company.

PAR. 5. Respondent Millwood Corporation in its aforesaid control and management of the business of respondent Lexington Manufacturing Company and respondent Middlesburg Mills, dictates, and acquiesces, and participates in, said practice.

PAR. 6. That the above alleged acts and things done by respondents and by each of them constitute an unfair method 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.

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 Lexington Manufacturing Company, Middlesburg Mills, and Millwood 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 appearance and filed their answer herein, hearings were had and evidence and testimony was thereupon introduced in support of the allegations of said complaint before Lee Cyr, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and counsel for the Federal Trade Commission having submitted a brief, and counsel for the defendants having notified the Commission of his intention not to file any brief, 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 conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent Lexington Manufacturing Company is a corporation organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business at the town of Lexington in said State, where for several years prior to November 16, 1922, it was engaged in the manufacture of bedticking and other cotton products.

PARAGRAPH 2. Respondent Middlesburg Mills is a corporation organized and existing under and by virtue of the laws of the State of South Carolina, with its principal office and place of business at the town of Batesburg in said State, where for several years prior to November 16, 1922, it was likewise engaged in the manufacture of bedticking and other cotton products.

PAR. 3. Respondent Millwood Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with a statutory office in the city of Wilmington in said State, and executive offices in New York City, N. Y. It has never engaged in manufacturing or selling, and it functions solely as a holding company, i. e., it owns the capital stock of other companies, including more than 50 per cent of the capital stock of the other respondents herein.

PAR. 4. The officers of respondents Lexington Manufacturing Company and Middlesburg Mills are identical, and the same individual is president of all three respondents.

PAR. 5. For several years prior to November 16, 1922, Lexington Manufacturing Company and Middlesburg Mills were engaged in the business of selling said products to jobbers and manufacturers in the various States of the United States, and caused same to be transported from their respective mills, into and through various States of the United States to said purchasers; and in the course and conduct of their said business have been at all times herein mentioned in competition with other persons, partnerships, and corporations, engaged in the manufacture and sale of bedticking and other cotton products. On November 16, 1922, the respondents Lexington Manufacturing Company and Middlesburg Mills sold and disposed of their entire physical assets and good will, as of April 1, 1922, their only property now consisting of the capital stock of the companies which acquired said property. Both respondents Lexington Manufacturing Company and Middlesburg Mills are not now, and have not been, since November 16, 1922, engaged in manufacturing and selling, but they have not been dissolved and still exist as corporate entities. The corporation to which both respondents transferred their business has continued said business of the manufacture of bedticking.

PAR. 6. Among the competitors of respondents Lexington Manufacturing Company and Middlesburg Mills was the Amoskeag Manufacturing Company, which has been engaged in manufacturing cotton products in the vicinity of Manchester, N. H., since the early years of the nineteenth century. Although the form of organization has changed from a partnership to a corporation, and finally to a voluntary association, the name "Amoskeag Manufacturing Company" has been used exclusively from the beginning. It began to manufacture bedticking in 1826, and until power looms were installed in the company's mills in 1836, the cloth was woven in the home, on hand looms, from yarn spun in the company's mills. Since 1840 at least, and probably several years earlier, the highest quality bedticking of a blue and white stripe pattern, 32 inches in width, weighing 8 ounces to the yard, manufactured and sold by the Amoskeag Manufacturing Company, has been designated and labeled by it "A. C. A."—the letters being an abbreviation of the words "Amoskeag Company's A" quality. This label is also used on identical ticking, 36 inches in width, but on no other product of the Amoskeag Manufacturing Company. This 36-inch width ticking is proportionately heavier than the 32-inch ticking weighing 9 ounces to the yard.

PAR. 7. The original label as used by the Amoskeag Manufacturing Company was as follows:

Amoskeag Manufacturing Company
Power-Loom
Yds. ———
A C A
Amoskeag Falls, N. H.

This label was superseded sometime prior to 1860 by the following:

Amoskeag Manufacturing Company
A D 1836
Power-Loom
Yds. ———
A C A
Manchester, N. H.

Both labels, described above, were printed in red on a white background, with a scroll border, but between the years 1880 and 1885 the label then in use was reprinted in more attractive colors, i. e., a gray and gilt border was added, and the scroll was reproduced in gray and gilt. At the time this change was made another label was adopted on which appears a picture of the company's mills, with the words "AMOSKEAG MFG. CO'S MILLS, MANCHESTER, N. H." The "medallion" label on which is reproduced the medals awarded the Amoskeag Manufacturing Company at the London Exposition in 1851 and the Paris Exposition in 1855, was adopted between the years 1855 and 1860, and reprinted in more attractive colors between the years 1880 and 1885. Between the years 1905 and 1907 a fourth label was adopted, which bears the letters "A. C. A." printed in red type, 1½ inches high, on a white background, surrounded by a rectangular border in gray, gilt, and red. This latter label, which is known as the foot label, is attached to the bottom edge of each bolt of "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company.

PAR. 8. The weight, quality, and pattern of "A. C. A." ticking, manufactured by the Amoskeag Manufacturing Company has been consistently maintained for more than 80 years. The only change occurred about the year 1876, when a selvage or narrow border was added to facilitate sewing the ticking together. Formerly most of the bedding was made in the home, but in recent years bedding has been made in increasing quantities in factories, and hair and other materials have to a considerable extent replaced feathers for that purpose, although feathers continue to be used almost entirely in making pillows. The feather-proof and hair-proof quality of "A. C. A." ticking and its adaptation to the purposes for which it is used has caused it to become well and favorably known to the trade and the public generally, and it has become identified in the minds of the trade and a substantial portion of the public as the product of the Amoskeag Manufacturing Company.

PAR. 9. Several years ago respondents Lexington Manufacturing Company and Middlesburg Mills each began to label ticking, similar in pattern and general appearance, to the "A. C. A." ticking manufactured by the Amoskeag Manufacturing Company, with the letters "A. C. A." This label, together with two other labels were used by the Lexington Manufacturing Company on one grade of ticking only, weighing 8 ounces to the yard. The head or top label attached to the top edge of the bolt is as follows:

BOWLING BROOK
Batt. ———
——— yds.
IMPROVED FINISH.

The center label, considerably smaller in size, is as follows:

8 OZ.
WARRANTED FEATHER PROOF
STANDARD

The head ticket contained a picture of a flowing brook and a rising sun and contained no reference whatever to the identity of the manufacturer or the place of manufacture.

The foot label, previously referred to, on which the letters "A. C. A." appear, in black type, 1 inch high, on a pale green background, surrounded by a rectangular border in red, yellow, and black, is attached to the bolt in the same relative position as the foot label used by the Amoskeag Manufacturing Company. The three labels described have also been used on a small quantity of ticking weighing 8 ounces to the yard, by Middlesburg Mills. An "A. C. A." label, similar to that described, has been used by Middlesburg Mills in conjunction with labels bearing the words " Iron Mountain " and " Ridge Spring " upon ticking similar in pattern and design to the ticking of the Amoskeag Manufacturing Company, weighing 4 ounces to the yard and 7 ounces to the yard, respectively; also in conjunction with other labels on ticking weighing less than 8 ounces to the yard. Each respondent has attached a label bearing the letters "A. C. A." to ticking, at the request of its sales agent and purchasers. Also on its own initiative without being requested to do so.

PAR. 10. The sale of ticking, of a blue and white stripe pattern, weighing 8 ounces to the yard, by the Amoskeag Manufacturing Company for generations, has resulted in the trade and a substantial portion of the consuming public, associating the letters "A. C. A." with the ticking of that pattern and weight manufactured by that company. The use of this label by respondents and other manufacturers has actually resulted in their product being sold as and for the ticking of the Amoskeag Manufacturing Company. The use of the label "A. C. A." by respondents Lexington Manufacturing Company and Middlesburg Mills has not only enabled dealers to obtain higher prices for the ticking so labeled and effect a more ready sale thereof, but it has also had the tendency and capacity to mislead and deceive the purchasers thereof and the consuming public, by enabling dealers to sell the tickings of respondents as and for the ticking manufactured by the Amoskeag Manufacturing Company.

CONCLUSION.

That the acts, practices, and activities of respondents as hereinabove set forth and under the conditions and in the circumstances set forth in the foregoing findings as to the facts are unfair methods of competition in commerce and constitute a 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 the respondents, the testimony and documentary evidence offered and received, and the brief of counsel for the Commission, and the Commission having made its findings and conclusion that the 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," *Therefore, it is now ordered*, That the respondents Lexington Manufacturing Company and Middlesburg Mills corporations organized and existing under and by virtue of the laws of the State of South Carolina, their officers, directors, agents, servants and employees, do cease and desist—

1. From in any way designating or describing any bedticking manufactured or sold by them as "A. C. A." ticking, either in advertisements, circulars, price lists, or other literature in which bedticking manufactured or sold by respondents is listed, described, or advertised for sale in interstate commerce.

2. From placing upon any ticking manufactured or sold by them any ticket or label upon which appear the letters "A. C. A." or any combination or variation thereof.

It is further ordered, That respondents, within sixty (60) days after the service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth, to which report should be attached copies of all cartons, containers, catalogues, price lists, circulars, and labels prepared and distributed by said respondents to the trade in interstate commerce.

It is further ordered, That the complaint heretofore issued in the above entitled matter be, and the same is, hereby dismissed as to the respondent Millwood Corporation.

FEDERAL TRADE COMMISSION

v.

THE DON-O-LAC COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 924—July 18, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of paints, varnishes, and shellac, varnish substitutes, labeled and sold as "American Shellac," a product which contained, as first made, none, and later only a small proportion, of genuine shellac; with the effect of deceiving purchasers at retail, and with a capacity and tendency to mislead and deceive the trade and the purchasing public, to the injury of competitors who truthfully described their products:

Held, That such mislabeling, and such misrepresentation of product, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest 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 charges that the Don-O-Lac Company, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of Rochester, in said State. It is, and at all times hereinafter mentioned has been, engaged in the business of manufacturing, selling, and distributing paints, varnishes, and shellacs, and substitutes for shellac, to painters, jobbers, dealers, and the public generally throughout the United States. In the course and conduct of its business respondent causes its said products when sold to be transported from the State of New York through and into other States of the United States and the District of Columbia, to the purchasers thereof. In the course and conduct of its said business respondent is, and has been at all times herein mentioned, in competition with other persons, partnerships, and corporations similarly engaged in the manufacture and/or sale of similar products in interstate commerce and with the trade generally.

PAR. 2. Respondent in the course of its business as aforesaid has caused for more than one year last past and causes to be manufactured and sold to jobbers, dealers, and the purchasing public throughout the United States by means of traveling salesmen, mail orders and otherwise, a product used by consumers as and for shellac, and distributes said product from the State of New York to the said purchasers thereof in the various States of the United States and the District of Columbia. In the marketing of said product, as aforesaid, respondent sells, advertises, and represents same to customers, prospective customers, and the purchasing public as "American Shellac," and so brands and labels said products. The truth and facts are that said product is not shellac as commercially known, that it contains no shellac gum, which gum is produced in, and obtained from, India, that it is not manufactured or composed of shellac gum and alcohol, and that it is inferior in quality and value to shellac as commercially known. The said representations, advertising, branding, and labeling of said product by respondent as aforesaid are false and have the capacity and tendency to mislead and deceive the said purchasers thereof, the trade, and the purchasing public into the belief that the product so represented, advertised, labeled, and branded is shellac as commercially known, that said product contains said shellac gum and that said product is manufactured and composed of said shellac gum and alcohol; and to cause said purchasers to purchase said product in said belief.

PAR. 3. There are a large number of manufacturers and distributors of shellac as commercially known which is composed entirely of aforesaid shellac gum and alcohol and who represent, advertise, brand, label, and sell the same under the name of "shellac," and also many manufacturers and distributors of shellac substitutes who do not represent, advertise, brand, or label said shellac substitutes as "shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum and alcohol.

PAR. 4. The above alleged acts and things done by 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.

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 respondent, The Don-O-Lac Company, Inc., charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, Don-O-Lac Company, Inc., having filed its answer, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed, at which hearings the respondent appeared and was represented by counsel.

And thereupon this case came on for final hearing upon the complaint and the answer thereto, brief by the Commission, the report of the trial examiner, exceptions thereto by both sides, and was argued by counsel, 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 conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent 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 Rochester, in said State. It is and has been since March 23, 1919, engaged in the business of manufacturing, selling, and distributing paints, varnishes, and substitutes for shellac varnish to painters, jobbers, dealers, and the public generally throughout the United States, and in the course and conduct of its business causes its said products when sold to be transported from the State of New York through and into other States of the United States and the District of Columbia to the purchasers thereof, and in the course and conduct of its said business respondent is and has been at all times herein mentioned in competition with other persons, partnerships, and corporations engaged in the manufacture, sale, and distribution of paints, varnishes, shellac varnishes and substitutes for shellac varnishes in interstate commerce and with the trade generally.

PAR. 2. Respondent in the course of its business as aforesaid has caused, for more than one year last past, and now causes to be manufactured and sold to jobbers, dealers, and the purchasing public throughout the United States by means of traveling salesmen, mail order and otherwise, a product used by consumers as and for shellac which said product the respondent markets under the name and label of "American Shellac."

PAR. 3. "Shellac" is a distinctive commodity and is the product produced by an insect, the Tachardia Lacca, a native of India and whose activities commercially are confined to India and a small portion of Tibet. This insect feeds upon the leaves, or twigs, of certain trees and at certain seasons swarms and collects in masses on the twigs of the trees and there exudes a substance which soon encloses the entire swarm. The twig is then detached from the tree and the twig with its incrustation, is placed in bags, or sacks, and heated over a charcoal fire, the ends of the bags being twisted by the natives until a gum-like substance drips from the bag. This gum is collected on large flat stones, or other flat surfaces, and there hardens into cakes. These cakes are later broken up into small particles and are exported from India to the United States and various countries. The industry is quite an extensive one, and there was imported in the United States in

	Pounds.
1910	24,500,000
1911	16,333,000
1912	20,750,000
1919	23,750,000
1920	29,500,000
1921	28,200,000

The figures for the years of the European War are not given. The shellac imported into the United States all originates in India and is used in the United States by manufacturers of furniture, electrical appliances, cables, whips, hats, and is in the paint trade used for making a varnish, which varnish, when made from shellac cut in alcohol, is superior to any other varnish, and is known to the trade as shellac varnish.

The essential and peculiar characteristics of shellac varnish are the rapidity with which it dries, its penetrating qualities into the grain of the wood, the fact that after it dries on being subjected to heat it becomes pliable and assumes the shape of the commodity on which it is used, and when cooled again, becomes rigid in a new shape.

No shellac is produced in America. It is all imported.

PAR. 4. "Shellac" as used and understood commercially in the trade and among manufacturers, distributors, painters, and a large part of the purchasing public, means the gum imported from India and the term "Shellac Varnish" is understood and does mean to manufacturers, distributors, painters, and a large portion of the household users thereof, the Indian gum, cut in alcohol.

PAR. 5. In the making of varnishes substitutes for shellac are used such as rosin, acroides and copal. Reputable manufacturers and dealers who prepare such varnishes with the substitutes above referred to label the product put upon the market either "Imitation Shellac," "Shellac Substitute," or put the product out under some fanciful name such as "Krystolac," "Zinlac" or other trade name. These substitutes for shellac varnish are inferior in quality and value to shellac but where no deception in branding is practiced, serve a useful purpose.

PAR. 6. The respondent, from about March 23, 1919, to April, 1922, manufactured and sold and placed upon the market a product, which said product the respondent named and branded "American Shellac" and labeled the containers in which the said product was put up with labels reading as follows:

American Shellac
White
Manufactured by
The Don-O-Lac Company, Inc.,
Rochester, N. Y.

and this product so labeled, branded, distributed, and sold, contained no shellac, namely, no gum produced in India, and after April 1, 1922, the respondent in the manufacture of its said product, incorporated 1 pound of India gum together with 44 pounds of other gums to each 10 gallons of alcohol.

PAR. 7. The said representations, branding, and labeling of said product by respondent, as aforesaid, are false and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and the purchasing public into the belief that the product so represented, advertised, labeled, and branded is shellac, and said representations, branding and labeling have deceived purchasers thereof at retail into the belief that the product so labeled and branded "American Shellac" is shellac and a varnish containing shellac gum.

PAR. 8. The misbranding by the respondent of its product is to the prejudice and injury of the competitors of the respondent, as such misbranded goods attract customers by means of the fraud which they perpetrate and trade is diverted from the seller of truthfully marked goods, and enables the respondent to sell its misbranded product to retailers under the belief that they are procuring a varnish made of shellac, and the said misbranding of the product of the respondent is injurious and prejudicial to the public, as the said misbranding has the tendency to and does and has mislead and deceived purchasers into buying said product under the mistaken belief that the same is a varnish made of shellac gum.

CONCLUSION.

That the practices of the respondent, as set forth in the foregoing findings as to the facts are, in the circumstances therein set forth, 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 answer of the respondent, the testimony and the evidence, the trial examiner's report upon the facts and the exception thereto, and upon the 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 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, the Don-O-Lac Company, Inc., its officers, directors, representatives, agents, and employes, cease and desist—

(1) From employing or using on labels or as brands for varnish not composed wholly, 100 per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delievered to customers, the words "American Shellac" or the word "Shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums therein used clearly stated upon the label, brand, or upon the containers (e. g., "Shellac substitute," or "Imitation Shellac" to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) From using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain 100 per cent shellac gum cut in alcohol, the words "American Shellac" or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients,

or gums therein used clearly stated (e. g., "Shellac Substitute," or "Imitation Shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

It is further ordered, That the respondent shall file with the Federal Trade Commission, within sixty days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to and shall attach to such report two copies of all circulars, advertisements, devices, or labels distributed or displayed to the public by the respondent in connection with the sale of its product in interstate commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION
v.
PROSPERITY COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 997—July 18, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of garment-pressing machines; for the purpose of inducing purchasers of competitors' machines on the installment plan to violate their contracts and to install and use its own machines in place of said competitors',

(a) Offered to and did allow purchasers to apply on the purchase price of its machines such sums as had theretofore been paid by them on such competing machines; and

(b) Offered and agreed to indemnify such purchasers as violated their contracts against any loss which might accrue to them by reason thereof:

Held, That such inducing of breach of contract, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest pursuant to 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," the Federal Trade Commission charges that the Prosperity Company, Inc., hereinafter referred to as the respondent, is and has been using unfair methods of competition in commerce in violation of the provisions of Section 5 of the said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Said respondent is a corporation organized under and existing by virtue of the laws of the State of New York with its principal office and place of business at the city of Syracuse in said State. It is and at all times hereinafter mentioned was engaged in the business of manufacturing and selling garment-pressing and laundry machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, N. Y., to purchasers thereof located in the various States of the United States and the District of Columbia. It marketed its machines by means of orders therefor secued by its salesmen and transmitted to its executive offices at Syracuse, N. Y., where they are accepted or rejected. Upon the acceptance of such orders the machines were shipped from Syracuse, N. Y., to purchasers thereof located in the various States and territories of the United States and the District of Columbia, who paid for the same in cash or by means of promissory notes accompanying written contracts with the said respondent providing that title and ownership of said machines would remain in the said respondent until the full purchase price represented by the notes was paid in full in cash.

PAR. 2. Said respondent in the course and conduct of its business, as aforesaid, has adopted and carried out the following methods of competition during several years last past, to wit:

(1) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said company, installed and in use in the places of business of such purchasers on installment-payment contracts, wrongfully and unlawfully to breach their contracts with said competitors, and thereupon to install and use in the place and instead of such machines purchased from the competitors of said respondent, garment-pressing machines manufactured by the said respondent,

(a) Offered to allow, and did allow such purchasers, under contract with such competitors, as part payment of the purchase price of its own machines, such sums as had been paid on contracts for the purchase of such competing machines by the purchasers;

(b) Agreed to furnish, and did furnish such purchasers under contract with such competitors, the services of attorneys to defend suits brought, or expected to be brought by such competitors for the purchase price of such competing machines.

PAR. 3. The above alleged acts and things done by respondents are all to the prejudice of the public and competitors of the respondent corporation 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."

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 Prosperity Company, Inc., charging it with the use of unfair methods of competition in violation of the provisions of said act. The respondent having entered its appearance and filed its answer herein, a statement of facts was agreed upon by counsel for the Commission and counsel for respondent, to be taken in lieu of evidence. And thereupon this proceeding came on for final hearing, 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 conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent Prosperity Company, Inc., is a corporation organized under and existing by virtue of the laws of the State of New York, with its principal office and place of business at the city of Syracuse in said State. It is and at all times hereinafter mentioned was engaged in the business of manufacturing and selling garment-pressing and laundry machines throughout the United States, shipping such machines when manufactured at its factory in Syracuse, N. Y., to purchasers thereof located in the various States of the United States and the District of Columbia. It markets its machines by means of orders therefor secured by its salesmen and transmitted to its executive offices at Syracuse, N. Y., where they are accepted or rejected. Upon the acceptance of such orders, the machines are shipped from Syracuse, N. Y., to purchasers therefor located in the various States and Territories of the United States and the District of Columbia, who pay for the same in cash or by means of promissory notes, accompanying written contracts with the said respondent, providing the title and ownership of said machines shall remain in the said respondent until the full purchase price represented by the notes is paid in full in cash.

PAR. 2. In the regular course and conduct of its business, as aforesaid, for more than one year prior to the issuance of said complaint, respondent has adopted and carried out the following methods of competition:

(1) For the purpose of inducing and attempting to induce purchasers of garment-pressing machines of competitors of said respondent, installed and in use in the places of business of such purchasers on installment payment contracts, wrongfully and unlawfully to breach their contracts with said competitors and thereupon to install and use in the place and stead of said machines purchased from the competitors of said respondent, garment-pressing machines manufactured by the said respondent—

(a) It offered to allow and did allow a number of such purchasers under contract with such competitors, as part payment of the purchase price of its own machines, such sums or parts of such sums as had been paid by said purchasers on contracts for the purchase of such competing machines.

(b) It has offered and agreed to indemnify such purchasers who breached their contracts for the purchase of competing machines against any loss which might accrue to them because of such breach.

CONCLUSION.

The practices of the said respondent under the conditions and circumstances described 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer thereto and a stipulation as to the facts filed herein, and the Commission having made its report in which it stated 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 Prosperity Company, Inc., its agents, representatives, servants, and employees, do cease and desist from—

Inducing, or attempting to induce, purchasers of garment-pressing machines of competitors to breach their contracts with such competitors, and to install and use machines purchased from said respondent corporation;

And in particular by any of the following means:

(a) Allowing or offering to allow such purchasers as part payment of the purchase price of its own machines, such sums as have been paid on contracts for the purchase of such competing machines;

(b) Agreeing to indemnify or offering to indemnify such purchasers who breach their contracts for the purchase of competing machines against any loss which may accrue to them because of such breach.

It is further ordered, That the respondent Prosperity Company, Inc., shall within thirty (30) days from the date of service of this order, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

ARMSTRONG PAINT AND VARNISH WORKS, UNITED STATES ROOFING PAPER AND PAINT FACTORIES, INCORPORATED, AND ABE HOCHMAN AND HARRY GOLDFISH, CO-PARTNERS DOING BUSINESS UNDER THE TRADE NAME OF ARMY AND NAVY STORES.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 776—July 24, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture of paints and varnishes neither made for the Army or Navy nor made in accordance with government specifications or requirements, and in the sale thereof to purchasers, including so-called Army and Navy Stores dealing in Army and Navy surplus supplies,

(*a*) Used the words "United States," or the abbreviation "U. S.," together with a picture of "Uncle Sam," in labels and advertising matter prepared by it at the request of its customers for their use in marketing the aforesaid products; and

(*b*) Used, at the request of customers, such legends as "U. S. House Paint," "U. S. Flat Wall Finish," etc., together with a picture of "Uncle Sam," in labeling its products; and

Where a customer of said corporation, a merchandising concern owning no factory and also engaged in the sale to so-called Army and Navy Stores of roofing papers not made for the government or in accordance with its specifications, and of paints and varnishes usually made for it by said corporation as aforesaid,

(*c*) Sold said products, similarly advertised and labeled (in the case of said paints and varnishes) by the aforesaid corporation at its direction; and

(*d*) Used the words "United States" and "factory" as a part of its corporate name, and used said name in the labels prepared by said corporation at its request for said products, and in the advertisement and sale thereof, and stated on its letterheads and in its advertisements that it was its policy to sell entirely direct, "cut out two or three profits and give the savings to its customers"; with the capacity and tendency thereby to deceive and mislead the public as to the advantages of dealing with it; and

Where a firm engaged as Army and Navy Stores, or Army and Navy Goods Stores, in the sale to the public in various cities of surplus Army and Navy supplies and also of ordinary commercial merchandise,

(*e*) Sold products procured from said concern and from said corporation, labeled as above set forth at its direction; and

(*f*) Falsely advertised and represented such products as government surplus;

All with a capacity and tendency thereby to mislead and deceive the public into believing that the aforesaid products were goods made for the government or in accordance with its specifications, of high grade but sold at a low price, due to the necessity of liquidating the large quantities of supplies ordered for the Army and Navy:

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

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Armstrong Paint & Varnish Works, United States Roofing Paper and Paint Factories, Inc., and Abe Hochman and Harry Goldfish, partners, doing business under the trade name of Army & Navy Stores, hereinafter referred to as respondents, have been and are 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Armstrong Paint & Varnish Works, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business in the city of Chicago, in the State of Illinois, and is engaged in the business of manufacturing, labeling, and selling paints and varnishes, and of causing the paints and varnishes so sold to be transported from the State of Illinois through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged. That respondent, United States Roofing Paper and Paint Factories, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of South Dakota, with its principal place of business in the cities of Minneapolis and St. Paul, in the State of Minnesota, and is engaged in the business of selling paints, varnishes, roofing paper, and kindred products throughout many States of the United States, and of causing its products so sold to be transported from the State of Minnesota through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged. That the respondent, Abe Hochman and Harry

Goldfish, constitute a partnership and carry on business under the name of Army & Navy Stores, with places of business in the cities of Minneapolis, Minn.; St. Louis, Mo.; Springfield, Ill., and Peoria, Ill., and have been and are engaged in the sale of Army and Navy surplus supplies purchased by them, and general commercial supplies among which are paints, varnishes, roofing paper, and kindred products, throughout many of the States of the United States, and in causing the merchandise and commodities so sold to be transported from their places of business in Minnesota, Missouri, and Illinois through and into other States of the United States to the purchasers thereof, and in the conduct of such business are in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

PAR. 2. That respondent Armstrong Paint & Varnish Works, in the course of its business as described in paragraph 1 hereof, labels certain paints and varnishes, manufactured and sold by it, as "U. S. Paint" and "U. S. Varnish"; that it reproduces upon these labels a picture of the figure known as Uncle Sam and symbolic of the United States. That it sells paint and varnish so labeled to purchasers, including stores designated as Army and Navy Stores in various States in the United States, and which it knows deal in, and are held out generally as dealing in, Army and Navy supplies and supplies made for, and according to specifications of, the Government of the United States, and which it knows offer to sell and sell the said paints and varnishes under the above described labels to the general purchasing public. That said paint and varnish are not made for the Army or Navy or for, or according to specifications of, the Government of the United States or any department or branch thereof. That such labels are false and misleading and are calculated to, and actually do, deceive and mislead the public into the belief that the Government of the United States has, or has had, some connection with the manufacture of the said paints and varnishes. That said respondent places on certain of said labels at the request of respondent, United States Roofing Paper and Paint Factories, Inc., the words "United States Roofing Paper and Paint Factories, Inc." thus indicating that said last named respondent manufactured the paints and varnishes carrying said labels, whereas in truth and in fact, said paint and varnish were manufactured by respondent, Armstrong Paint & Varnish Works.

PAR. 3. That respondent, United States Roofing Paper and Paint Factories, Inc., in the conduct of its business as described in paragraph 1 hereof, sells paint, varnish, roofing paper, and kindred products which it labels, or causes to be labeled, "U. S." and on which labels it reproduces a picture of the figure known as Uncle Sam and symbolic of the United States; that respondent advertises said paint, varnish, and roofing paper as "U. S. Paint," "U. S. Varnish," and "U. S. Roofing Paper," and by means of the reproduction of a picture of the figure known as Uncle Sam and symbolic of the United States, in newspapers, magazines, and other advertising mediums having a circulation in various States of the United States, and in circulars sent by it from its places of business in the State of Minnesota through and into other States of the United States to prospective customers. That said paint, varnish, and roofing paper, labeled and advertised as described above, are not made for the Army or Navy or for, or according to specifications of, the Government of the United States or any department or branch thereof. That said paint and varnish is usually made for respondent, United States Roofing Paper and Paint Factories, Inc., and thus labeled at said respondent's directions by respondent, Armstrong Paint & Varnish Works; that such labeling and advertising of said paint, varnish and roofing paper, especially when used in connection with respondent's corporate name which appears on all the labels and in all of the advertisements, have a tendency to, and are calculated to, and actually do, deceive and mislead the public into the belief that the Government of the United States has, or has had, some connections with the commodities.

PAR. 4. That respondent, United States Roofing Paper and Paint Factories, Inc., in the conduct of its business as described in paragraph 1 hereof, sells at wholesale to stores designated as Army & Navy Stores, and which it knows deal in, and are held out generally as dealing in, Army and Navy surplus supplies, paint, varnish, and roofing paper which it labels or causes to be labeled "U. S." and on which labels is reproduced a picture of the figure known as Uncle Sam and symbolic of the United States; that respondent's corporate name, United States Roofing Paper and Paint Factories, Inc., appears on all said labels; that the paint, varnish, and roofing paper, labeled as described above, are not Army or Navy surplus supplies, or made for, or according to specifications of, the Government of the United States or any department or branch thereof. That respondent knows that said paint, varnish, and roofing paper are sold by and from these so-called Army & Navy Stores to the general public. That said labels are calculated to, and actually do, deceive and mislead the public into the belief that such supplies were made for the Army or Navy or for, or according to specifications of, the Government of the United States, and are of a high grade, but sold at a low price on account of the necessity for liquidating the large supply of said materials ordered for the Army and Navy.

PAR. 5. That respondent, United States Roofing Paper and Paint Factories, Inc., represents by means of its corporate name, and by statements and representations made on its letterheads, and in advertisements which it causes to be inserted in newspapers, magazines and other advertising mediums which have a circulation in various States of the United States, and in circulars sent by it from its places of business in the State of Minnesota through and into other States of the United States to prospective customers, that it is the manufacturer of the article sold by it; that among such statements and representations are those to the effect that it is respondent's policy to sell entirely direct, cut out two or three profits and give the saving to its customers, and that in formulating "U. S. Paint" respondent had aimed to produce a paint that will insure maximum durability and wear away gradually; that such statements and representations are false and misleading and are calculated to, and actually do, mislead and deceive purchasers into the belief that when they buy from respondent, they are buying directly from the manufacturer and thus eliminating the middleman's profit.

PAR. 6. That respondents, Abe Hochman and Harry Goldfish, partners, doing business under the trade name of Army & Navy Stores, in the conduct of their business as described in paragraph 1 hereof, sell varnish, paint, and roofing paper, which are labeled, and which they caused to be labeled, "U. S." and on which labels is reproduced a picture of a figure known as Uncle Sam and symbolic of the United States; that said respondents advertise said varnish, paint and roofing paper, in newspapers, magazines and other advertising mediums having a large circulation in various States of the United States, and in circulars sent by them from their places of business in Minnesota, Missouri, and Illinois through and into other States of the United States to prospective customers, as Army and Navy surplus varnish, paint, and roofing paper and as varnish, paint, and roofing paper made for, and according to specifications of, the Government of the United States; that said respondents represent directly to customers that said varnish, paint and roofing paper are Army and Navy surplus varnish, paint, and roofing paper, and made for, and according to specifications of, the Government of the United States. That said respondents obtain said varnish, paint, and roofing paper thus labeled from the respondent, United States Roofing Paper and Paint Factories, Inc., and also from respondent, Armstrong Paint & Varnish Works, which makes and thus labels it at the direction of respondents, Abe

Hochman and Harry Goldfish, and respondents, Abe Hochman and Harry Goldfish, know that it is not Army or Navy surplus paint or varnish or roofing paper or paint or varnish or roofing paper made for, or according to specifications of, the Government of the United States. That said respondents, Abe Hochman and Harry Goldfish, do not sell and never have sold Army and Navy surplus varnish, paint and roofing paper or varnish or paint or roofing paper made for, or according to specifications of, the Government of the United States or any department or branch thereof. That said labels, advertisements, and representations, especially when taken in connection with the name under which respondents, Abe Hochman and Harry Goldfish, operate, and the fact that they so sell some Army and Navy surplus supplies, are false and misleading and are calculated to, and actually do, deceive and mislead the public into the belief that such varnish, paint and roofing paper were made for the Army or Navy or for, or according to specifications of, the Government of the United States, and are of a high grade, but sold at a low price because of the necessity for liquidating the large supply of said materials ordered for the Army and Navy of the United States.

PAR. 7. That since respondents, Abe Hochman and Harry Goldfish, hold themselves out to the public generally as dealers in such merchandise, commodities, and supplies, and do business under the name of Army & Navy Stores, the sale by them from such stores of ordinary commercial merchandise, commodities, and supplies without disclosing to the purchaser that such merchandise, commodities, and supplies are not Army or Navy surplus supplies and were not made for, or according to specifications of, the Government of the United States or any department or branch thereof, amounts to a fraudulent representation, which is calculated to, and actually does, deceive and mislead the public into the belief that such supplies were made for the Army or Navy or for, or according to specifications of, the Government of the United States, and are of a high grade, but sold at a low price because of the necessity for liquidating the large supply of said materials ordered for the Army and Navy of the United States.

PAR. 8. That by reason of the facts set out in the foregoing paragraphs of this complaint, the respondents, each and all of them, have been and are using unfair methods of competition in commerce within the intent and meaning 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."

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 its complaint upon the respondents, Armstrong Paint and Varnish Works, United States Roofing Paper and Paint Factories, Incorporated, Abe Hochman and Harry Goldfish, copartners, doing business under the trade name of the Army and Navy Stores, charging them and each of them with unfair methods of competition in commerce in violation of said Act.

Respondents having entered their appearance by their attorneys or officers, and having filed their answers herein, hearings were had before J. W. Bennett, an examiner of the Federal Trade Commission theretofore duly appointed, and testimony and documentary evidence were thereupon offered and received in support of the allegations of the said complaint and in support of the allegations of said answers of respondents, which evidence was duly recorded and duly certified, and the Federal Trade Commission 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 Armstrong Paint and Varnish Works is a corporation organized under and existing by virtue of the laws of the State of Illinois, incorporated about 1910, with its principal place of business in the city of Chicago, in said State, and is engaged in the business of manufacturing, labeling, and selling paints and varnish, and causing the paints and varnish so sold to be transported from the State of Illinois through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

PAR. 2. Respondent United States Roofing Paper and Paint Factories, Incorporated, is a corporation organized under and existing by virtue of the laws of the State of South Dakota, incorporated in December, 1918, or December, 1919, with its principal place of business in the city of Minneapolis, State of Minnesota, and a branch office and place of business in the city of St. Paul, in the State of Minnesota, and said respondent is engaged in the business of selling paints, varnish, roofing paper, and kindred products in many States of the United States and of causing its products so sold to be transported from the State of Minnesota through and into other States of the United States to the purchasers thereof, and in the conduct of such business is in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

(*a*) Subsequent to the incorporation of respondent, United States Roofing Paper and Paint Factories, Incorporated, as hereinabove set forth, said corporation, without reorganization, and without changing its identity, caused its name to be changed to United States Roofing & Paint Company, Incorporated, which latter company is a corporation organized under and existing by virtue of the laws of the State of South Dakota, in every way identical with said respondent, United States Roofing Paper and Paint Factories, Incorporated, except in the matter of name, and under the name of United States Roofing and Paint Company, Incorporated, said respondent, United States Roofing Paper and Paint Factories, Incorporated, continued said business of selling paints, varnishes, roofing papers, and kindred products throughout many States of the United States, as hereinabove set forth.

Par. 3. Respondents, Abe Hochman and Harry Goldfish, constitute a copartnership and carry on business under the name of Army and Navy Stores, or Army and Navy Goods Store, to which is prefixed the name of the city in which said store is located, for instance: "St. Louis Army and Navy Goods Store" is the name under which said Abe Hochman and said Harry Goldfish have done business in the city of St. Louis, State of Missouri. Said Abe Hochman and Harry Goldfish, copartners, as hereinabove stated, have or have had similar places of business, with similar names, in the cities of Minneapolis, Minn., St. Louis, Mo., St. Joseph, Mo., Springfield, Ill., Peoria, Ill., and Buffalo, N. Y., and have been or are engaged in the sale of Army and Navy surplus supplies purchased by them, and in the sale of general commercial supplies, among which are paints, varnishes, roofing papers, and kindred products, throughout many of the States of the United States, and in causing the merchandise and commodities so sold to be transported from their places of business in Minnesota and Missouri through and into other States of the United States to purchasers thereof, and in the conduct of such business are in direct and active competition with other corporations, copartnerships, and individuals similarly engaged.

Par. 4. Respondent, Armstrong Paint and Varnish Works, in the course of its business as described in paragraph 1 hereof, has labeled certain paints and varnishes manufactured and sold by it "U. S. House Paints," "U. S. Ready-Mixed House Paints," "U. S. Shingle Stain," "U. S. Barn Paint," "U. S. Flat Wall Finish," etc.

(*a*) In connection with said names or designations mentioned in this paragraph, respondent Armstrong Paint & Varnish Works, has reproduced and reproduces upon said labels a picture of the figure known as "Uncle Sam," which is popularly symbolic of the United States.

(*b*) Respondent, Armstrong Paint and Varnish Works, has sold and sells its paints and varnishes so labeled to purchasers, including stores designated as Army and Navy Stores, in various States of the United States, which stores it knows as having dealt in and having been generally held out as dealing in Army and Navy supplies and supplies made for or according to specifications of the Government of the United States, which Army and Navy Stores or Army and Navy Goods Stores it knows offer to sell and do sell said paints and varnishes under the above-described labels to the general purchasing public.

(*c*) Said paints and varnishes so made and sold by respondent, Armstrong Paint & Varnish Works, are not made for the Army, nor Navy, nor for nor according to the specifications of the United States nor of any department or branch thereof.

(*d*) Such labels so used upon goods so sold are false and misleading and have a tendency and capacity to deceive and mislead the public into the belief that the Government of the United States has or has had some connection with the manufacture of said paints and varnishes.

(*e*) Said respondent, Armstrong Paint and Varnish Works, has placed and places said labels described in this paragraph upon paints and other similar goods manufactured and sold by it at the request of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), and upon such labels, in pursuance of said request, respondent, Armstrong Paint & Varnish Works has placed and places the words "United States Roofing Paper and Paint Factories, Incorporated," thus indicating that said last named respondent has manufactured the paints and varnishes carrying said labels, when in truth and in fact, said paints and varnishes were manufactured by respondent, Armstrong Paint & Varnish Works.

(*f*) Respondent, Armstrong Paint and Varnish Works, maintains in connection with its manufacturing plant, a printing plant in which it prints said labels mentioned in this paragraph, whether said labels are to be used at the request of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), or at the request of other customers. Respondent, Armstrong Paint and Varnish Works also prints at the request of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), circulars advertising the goods sold by said last named respondent and containing names or designations identical with or similar to those placed upon the labels mentioned in this paragraph, together with the figure of "Uncle Sam," symbolic of the United States.

PAR. 5. Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing & Paint Company, Incorporated), in the conduct of its business as described in paragraph 2 hereof, sells paints, varnishes, roofing papers, and kindred products which it labels or causes to be labeled "U. S. House Paint," "U. S. Rubber Roofing," "U. S. Slate Surface Roofing," "U. S. Shingle Pattern Slate Roofing," "U. S. Shingle Slabs," "U. S. Building Papers," "U. S. Deadening Felt," "U. S. Creosote Shingle Stain," "U. S. Asbestos Cement," "U. S. Floor & Utility Varnish," "U. S. Brand Barn Paint," "U. S. Ready-Mixed House Paint," "U. S. Inside Floor Paint," "U. S. Flat Wall Finish," "U. S. Shingle Stain," "U. S. Barn Paint," et cetera, on which labels it reproduces a picture of the figure known as "Uncle Sam" and symbolic of the United States.

(*a*) Respondent advertises said paints, varnishes, and roofing papers so labeled under the names and designations mentioned in this paragraph (and in such advertisements appear the reproduction of a picture of the figure known as "Uncle Sam" and symbolic of the United States), and in the newspapers, magazines, and other advertising mediums of general circulation in several States of the United States and in circulars sent by it from its place of business in the State of Minnesota through and into other States of the United States, to customers and prospective customers.

(*b*) Said paints, varnishes, and roofing papers labeled and advertised as described in this paragraph are not made for the Army, nor Navy, nor for nor according to specifications of the Government of the United States, nor of any department or branch thereof. Said paints and varnishes are usually made for respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), and thus labeled at said respondent's direction, by respondent, Armstrong Paint and Varnish Works.

(*c*) Such labeling and advertising of said paints, varnishes, and roofing papers, especially when used in connection with respondent's corporate name, which appears on all such labels and in all such advertisements, have a tendency and capacity to deceive and mislead the public into the belief that the Government of the United States has or has had some connection with such commodities.

PAR. 6. Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), in the conduct of its business as described in paragraphs 2 and 5 hereof, sells at wholesale to stores designated as Army and Navy Stores, or Army and Navy Goods Stores, as more fully set forth in paragraph 3 hereof, which stores it knows deal in and are held out generally as dealing in Army and Navy surplus supplies, paints, varnishes, and roofing papers.

(*a*) Said paints, varnishes, and roofing papers so sold to said Army and Navy Stores, or Army and Navy Goods Stores, by respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), are labeled with names or designations bearing the letters "U. S.," on which labels is reproduced a picture of the figure known as "Uncle Sam" and symbolic of the United States. Respondent's corporate name, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), appears on all said labels.

(*b*) Said paints, varnishes, and roofing papers so labeled and sold as described in this paragraph, are not Army nor Navy supplies, nor made for nor in accordance with specifications of the Government of the United States, nor of any department or branch thereof.

(*c*) Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), knows that said paints, varnishes, and roofing papers are sold by and from these so-called Army and Navy Stores, or Army and Navy Goods Stores, to the general public.

(*d*) Said labels used as set forth in this paragraph are false and misleading and have the capacity and tendency to mislead and deceive the public into the belief that such supplies were made for the Army or Navy, or for or according to the specifications of the Government of the United States and are of a high grade.

PAR. 7. Respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), has represented by means of its corporate name and by statements and representations made on its letterheads and advertisements which it causes to be placed in newspapers, magazines, and other advertising mediums in general circulation in several States of the United States and in circulars sent by it from its places of business in the State of Minnesota through and into other States of the United States to customers and prospective customers, that it is the manufacturer of the article sold by it.

(*a*) Among such statements of respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), are statements and representations to the effect that it is respondent's policy to sell entirely direct, "cut out two or three profits and give the savings to its customers."

(*b*) In truth and in fact respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paper Company, Incorporated), is a merchandising concern only and had no factory whatever.

(*c*) Such statements and representations as are made by respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), as set forth in this paragraph, are false and misleading and have the capacity and tendency to deceive and mislead the public into the belief that when they are buying from respondent they are buying directly from the manufacturer and thus eliminating the middleman's profit.

PAR. 8. Respondents, Abe Hochman and Harry Goldfish, copartners, doing business under the trade name of Army and Navy Stores, or Army and Navy Goods Stores, in the conduct of their business, as described in paragraph 3 hereof, sell varnishes, paints, and roofing papers which are labeled with names or designations bearing the symbol or abbreviation "U. S.," and on which labels is reproduced a picture of the figure known as "Uncle Sam" and symbolic of the United States, and more particularly described in paragraphs 4 and 5 hereof.

(*a*) Said respondents advertise said varnishes, paints and roofing papers in newspapers, magazines, and other advertising mediums having a large circulation in several States of the United States as Army and Navy surplus varnishes, paints, and roofing papers.

(*b*) Said respondents, Abe Hochman and Harry Goldfish, doing business as Army and Navy Stores, or Army and Navy Goods Stores, represent to customers or visitors to said stores, that said varnishes, paints, and roofing papers are Army surplus goods.

(*c*) Said respondents, Abe Hochman and Harry Goldfish, doing business as Army and Navy Stores, or Army and Navy Goods Stores, obtain said varnishes, paints, and roofing papers so labeled from respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise known as United States Roofing and Paint Company, Incorporated) and also from respondent, Armstrong Paint and Varnish Works, which latter respondent makes and thus labels said goods at the direction of respondents, Abe Hochman and Harry Goldfish, in business as Army and Navy Stores, or Army and Navy Goods Stores, and said last named respondents know that it is not Army nor Navy surplus paint, varnish, or roofing paper, nor paint, varnish, or roofing paper made for, nor according to specifications of the Government of the United States. Said respondents, Abe Hochman and Harry Goldfish, do not sell and have never sold Army and Navy surplus varnish, paint or roofing paper, nor varnish, paint, nor roofing paper made for the Government of the United States, nor any department or branch thereof.

(*d*) Said labels, advertisements and representations, especially when taken in connection with the firm name under which respondents, Abe Hochman and Harry Goldfish operate, and the fact that they do sell some army and navy surplus supplies, are false and misleading and have the capacity and tendency to deceive and mislead the public into the belief that such varnishes, paints, and roofing papers were made for the Army or Navy or for or according to the specifications of the Government of the United States and are of a high grade.

PAR. 9. During the period in which respondents, Abe Hochman and Harry Goldfish, copartners, doing business under the name of Army and Navy Stores, or Army and Navy Goods Stores, and United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), have been engaged in business, and more especially since the close of the Great War in November, 1918, the Government of the United States, as is well known by said respondents, and by the public generally, has been disposing of large quantities of surplus Army and Navy stores, and portions of such surplus have been offered for sale in several cities of the United States in stores doing business under the name and style of "Army and Navy Stores," or "Army and Navy Goods Stores," so that the public may be led to believe from its knowledge of such circumstances and conditions and from the name or names under which such stores are doing business that such stores actually do sell exclusively Army and Navy surplus goods or goods made for the Government of the United States, and/or in accordance with specifications prepared by the Government or some department or bureau thereof.

(*a*) In such circumstances and under such conditions the sale by respondents, Abe Hochman and Harry Goldfish, in stores or from stores known as Army and Navy Stores, or Army and Navy Goods Stores, of ordinary commercial merchandise, not Army or Navy supplies, nor Government commodities, without disclosing to the purchasers that such goods, supplies, or commodities are not Army nor Navy surplus supplies and were not made for nor according to specifications of the Government of the United States or any department or branch thereof amounts to a fraudulent and misleading representation, which has the capacity and tendency to mislead and deceive the public into the belief that said supplies were made for the Army or Navy or for and in accordance with the specifications of the United States and are of a high grade, but are sold at a low price because of the necessity of liquidating the large supply of such materials ordered for the Army and Navy of the United States.

PAR. 10. During the period in which respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing and Paint Company, Incorporated), has been in business as a corporation, as well as during the period in which respondent, Armstrong Paint and Varnish Works, has been manufacturing and labeling paints, varnishes, and like commodities offered for sale and sold in interstate commerce by respondents herein, with the names, designations, or descriptions "United States" or the symbols or abbreviations "U. S."; all in connection with a picture of the figure known as "Uncle Sam" and symbolic of the United States, the Government of the United States, as is well known by respondents and by the public generally, has been disposing of large quantities of surplus Army and Navy stores, and portions of such surplus have been offered for sale in several cities of the United States in stores doing business under the name and style of Army and Navy Stores or Army and Navy Goods Stores.

(*a*) In such circumstances and under such conditions such labels have and have had the capacity and tendency to mislead and deceive customers and consumers into the belief that said words and symbols in connection with such figure upon said labels indicate that all such commodities so labeled have been and are actually Army and Navy surplus goods, or goods made for the Government of the United States and/or in accordance with specifications prepared by the Government, or some department or bureau thereof, more especially when such goods have been and are sold through or from stores known as Army and Navy Stores or Army and Navy Goods Stores.

CONCLUSION.

The practices of said respondents and each of them 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 answers of respondents, the testimony and documentary evidence offered and received, and the briefs and arguments of counsel for the respective parties hereto, and the Commission having made its findings and conclusion that the respondents have and each of them 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,"

Therefore it is now ordered, That respondent Armstrong Paint & Varnish Works, a corporation organized under and existing by virtue of the laws of the State of Illinois, its officers, directors, agents, servants, and employees do cease and desist:

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S." or a picture of the figure known as "Uncle Sam" which by custom and general usage has be-

come well-known as symbolic of the United States either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

It is further ordered, That respondent, United States Roofing Paper and Paint Factories, Incorporated (otherwise United States Roofing Paper Company, Incorporated), a corporation organized under and doing business by virtue of the laws of the State of South Dakota, its officers, directors, agents, servants, and employees do cease and desist:

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S.," or a picture of the figure known as "Uncle Sam" which by custom and general usage has become well known as symbolic of the United States either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from, or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating, or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(3) From using in its firm name or on labels, or advertising or otherwise the word "Factories" or words of similar import in connection with statements indicating or representing that by reason of purchasing paints, varnish or roofing from it customers save, or can save, costs or profits otherwise and ordinarily required by intermediary dealers unless respondent is in fact a manufacturer, and not itself an intermediary dealer.

It is further ordered, That respondents, Abe Hochman and Harry Goldfish doing business under the name Army and Navy Stores or

Army and Navy Goods Stores; and each of them, their agents, servants and employees do cease and desist:

(1) From using the words "United States" or the symbol or abbreviation thereof "U. S.," or a picture of the figure known as "Uncle Sam" which by custom and general usage has become well known as symbolic of the United States either in combination or alone, in advertising matter or labels or otherwise, as describing commodities as having been purchased from, or manufactured for, or by, the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for, or by, the Government of the United States.

(2) From selling or offering for sale by means of labeling, designating or otherwise describing or advertising a commodity as "U. S. House Paint," "U. S. Floor or Utility Varnish," or by using words of similar import, as having been purchased from or manufactured for, or by the Government of the United States, when such commodities have not in fact been purchased from, or manufactured for or by the Government of the United States.

(3) From selling or offering for sale in "Army and Navy Stores" or otherwise, either by means of advertising, designating or otherwise describing or representing, directly or indirectly a commodity as surplus Government supplies, or Government supplies when such commodities have not been purchased from, or manufactured by, or for the Government of the United States.

It is further ordered, That respondents and each of them within sixty (60) days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth, to which reports should be attached copies of all labels, circulars or other advertisements issued and circulated by respondents respectively in several States of the United States or attached to goods sold or offered for sale by the respondents in interstate commerce.

FEDERAL TRADE COMMISSION
v.
BUTTERICK COMPANY, FEDERAL PUBLISHING COMPANY, STANDARD FASHION COMPANY, BUTTERICK PUBLISHING COMPANY, NEW IDEA PATTERN COMPANY, AND DESIGNER PUBLISHING COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 594—August 14, 1923.

SYLLABUS.

Where certain noncompetitive corporations engaged in the manufacture and sale of paper patterns to a substantial proportion of all the merchants of the country available for the distribution and sale of such products, in their contracts of sale—

(*a*) Required the merchant or distributor purchaser to agree to sell said patterns only at the prices fixed thereon by the selling corporation, and to observe said agreement; and

(*b*) Required the merchant or distributor purchaser to agree not to sell on his premises the patterns of any other manufacturer, and to observe said agreement;

With the effect of substantially lessening competition and tending to create a monopoly:

Held, That the use of such contracts, under the circumstances set forth, constituted an unfair method of competition in violation of Section 5 of an Act of Congress approved September 26, 1914, and a violation of Section 3 of an Act of Congress approved October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Butterick Company, the Federal Publishing Company, the Standard Fashion Company, the Butterick Publishing Company, the New Idea Pattern Company, and Designer Publishing Company, hereinafter referred to as the respondents, have been and now are using 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect upon information and belief as follows:

PARAGRAPH 1. That Butterick Company, Butterick Publishing Company, Standard Fashion Company, New Idea Pattern Company, and Designer Publishing Company are corporations organized and existing under the laws of the State of New York; that Designer Publishing Company is a consolidation of and successor to Standard Fashion Company and New Idea Pattern Company; that Federal Publishing Company is a corporation organized and existing under the laws of the State of New Jersey and that each of said respondents has an office and its principal place of business in New York City, N. Y.

PAR. 2. That Federal Publishing Company owns and controls all the issued and outstanding capital stock of Butterick Publishing Company and Standard Fashion Company; that Butterick Company owns and controls all the issued and outstanding capital stock of Federal Publishing Company and New Idea Pattern Company and likewise owns or controls all the issued and outstanding capital stock of Designer Publishing Company; that Butterick Publishing Company and Designer Publishing Company as the consolidation of and successor to Standard Fashion Company and New Idea Pattern Company, are each engaged in the manufacture and sale in interstate commerce, of paper dress patterns of women's and children's garments and in the publication and distribution in interstate commerce of periodicals and catalogues advertising and illustrating such patterns, and that in the conduct of such business the last-named respondents are operated, directed, and controlled by Federal Publishing Company and Butterick Company.

PAR. 3. That the manufacture and sale of paper patterns for women's and children's garments is practically dependent upon their distribution to the consumer through the medium of retail dry goods stores in which such patterns are carried as staple articles of trade; that each and all of the respondents are in competition with other producers of such patterns, but not with each other, for the dry goods stores which act as centers of distribution and for purchasers of such patterns from the stores.

PAR. 4. That the sale of paper dress patterns is a valuable and important asset to a retail dry goods dealer, as it tends toward the sale of the goods from which such patterns are made up and to increase the business of the store, particularly when the dress patterns are extensively advertised by their manufacturers.

PAR. 5. That one of the practices of respondents is to fix a price for the resale of their patterns, in pursuance of which they have severally but in common action entered into written contracts with about twenty thousand retail dry goods dealers throughout the

United States, each contract binding the dry goods retailer to maintain the resale price, which practice the respondents enforce by refusing to sell their patterns to dealers who refuse to enter into such contracts.

PAR. 6. That another of the practices of respondents is to exclude the patterns of their competitors from the dry goods stores in which their own patterns are on sale, in pursuance of which they have severally but in common action entered into written contracts with about twenty thousand retail dry goods dealers throughout the United States, each contract binding the dry goods retailer not to sell or permit the sale of any competitor's patterns on the premises, which practice the respondents enforce by threats to refuse and by refusals to sell its patterns to the dry goods retailers who refuse to enter into such contracts or be bound thereby, having entered into such contracts, and as well by threats of suits and institution of suits for damages.

PAR. 7. That the use by each and all of said respondents severally and in their common action of either and both of the above mentioned practices is an unfair method of competition in commerce within the 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.

II.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Butterick Company, the Federal Publishing Company, the Standard Fashion Company, the Butterick Publishing Company, the New Idea Pattern Company, and Designer Publishing Company, hereinafter referred to as the respondents, have been and now are violating the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the several recitals of paragraphs 1 to 6, inclusive, are hereby charged as fully and completely as though the said several paragraphs were herein repeated verbatim.

PAR. 2. That the actions and doings of the said respondents severally and in their common interest, hereinabove referred to and recited may be to substantially lessen competition and tend to create a monopoly in the line of commerce therein described, contrary to the intent and meaning of Section 3 of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents have been and now are using unfair methods of competition in interstate commerce in 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"; and that the said respondents have been and are violating the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and that a proceeding by it as to such alleged violation of Section 5 of the Act of September 26, 1914, would be to the interest of the public; and fully stated its charges in that respect; and respondents having entered their appearances by their attorneys and having duly filed their answer; and testimony in said proceedings having been taken before an examiner of the Commission, and thereupon this case came on for final hearing and the Commission having heard argument of counsel and having duly considered the record 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. The respondents, the Butterick Company, the Butterick Publishing Company, the Standard Fashion Company, the New Idea Pattern Company, and the Designer Publishing Company, Inc., are corporations organized and existing under the laws of the State of New York, and the respondent, the Federal Publishing Company, is a corporation organized and existing under the laws of the State of New Jersey.

The office and place of business of each of the said respondents, except the New Idea Pattern Company, is in the Butterick Building, No. 223 Spring Street, New York City; the principal office and place of business of the New Idea Pattern Company is 236 Broadway, New York, N. Y.

The Federal Publishing Company owns all the capital stock of the Butterick Publishing Company, except certain qualifying shares and one-half of the capital stock of the Designer Publishing Company, Inc., except certain qualifying shares.

The Butterick Company owns all of the capital stock of the Federal Publishing Company, except certain qualifying shares and one-half of the capital stock of the Designer Publishing Company, Inc., except certain qualifying shares.

On the 7th day of January, 1920, the respondents Standard Fashion Company and the New Idea Pattern Company were consolidated as the Designer Publishing Company, Inc., and the said Designer Publishing Company, Inc., succeeded to the business, property, assets, contracts, and interests of every kind and nature of the said Standard Fashion Company and the New Idea Pattern Company.

PAR. 2. By reason of common stock ownership mentioned in paragraph 1 hereof the respondents are not in ultimate competition with each other, and by reason of their ownership of the capital stock of the Standard Fashion Company, the New Idea Pattern Company, the Designer Publishing Company, Inc., and the Butterick Publishing Company, the respondents, the Butterick Company and the Federal Publishing Company, elect the directors who control the business activities of each of said respondents, the Butterick Publishing Company and the Designer Publishing Company, Inc., and while they existed, controlled the Standard Fashion Company and the New Idea Pattern Company.

PAR. 3. The term "pattern," as hereinafter used, means one of the paper patterns which are manufactured by all concerns engaged in the industry and which are put up in envelopes and sold to the purchasing public in that form. These patterns are distributed to the user, the consuming public, through department stores, dry goods stores, and other stores, in cities, towns, and villages, throughout the United States and through the mail to purchasers in the country districts, and the term "distributor," as hereinafter used, refers to department stores, dry goods stores, and other stores where patterns are sold at retail to the public.

PAR. 4. The sale of paper dress patterns is a valuable and important asset to a retail dry goods dealer, as it tends toward the sale of the goods from which such patterns are made up, and to increase the business of the store, particularly when the dress patterns are extensively advertised by their manufacturers.

PAR. 5. There are in the United States approximately 132,000 cities, towns, and villages. Of this number 287 contain 25,000 inhabitants or more; 259 contain 10,000 to 25,000; 721 contain 5,000 to 10,000; and 4,808 contain from 1,000 to 5,000 inhabitants, and it is not found advisable by the pattern companies engaged in manufacturing and selling patterns to have a distributor in places with less than 1,000 trading inhabitants, although in the west some towns or villages with 500 inhabitants have a distributor for one or more of the manufacturers engaged in the pattern industry, because said town or village is the center of a trading district.

PAR. 6. Prior to the organization of the Designer Publishing Company, Inc., the Standard Fashion Company and the New Idea Pattern Company were each engaged in the business of manufacturing and selling patterns and in the course of such business said respondents each maintained a factory in the city of New York, State of New York, in which patterns were designed, manufactured, and prepared for shipment to distributors and purchasers thereof, and since the organization of the Designer Publishing Company, Inc., as the successor of Standard Fashion Company and the New Idea Pattern Company, the Designer Publishing Company, Inc., has been engaged in like business, and in the course of such business it has maintained and operated in the city of New York, in the State of New York, a factory in which it designs, makes, and prepares patterns for shipment to distributors and purchasers thereof.

The Standard Fashion Company and the New Idea Pattern Company, prior to the organization of the Designer Publishing Company, Inc., and the Designer Publishing Company since its organization each in the course of its business sold products to distributors and purchasers thereof located in States other than the State of New York, and pursuant to such sales caused such products to be transported by common carriers from the State of New York through and into States of the United States other than the State of New York and into the District of Columbia to distributors or purchasers thereof.

The Butterick Publishing Company is engaged in the business of manufacturing and selling patterns and in the course of its business maintains in the city of New York, and State of New York, a factory in which such patterns are designed, manufactured, and prepared for shipment to distributors and purchasers thereof, and said respondent sells products to distributors and purchasers located in States other than the State of New York and causes said products to be transported by common carriers from the State of New York through and into many States of the United States and the District of Columbia to such distributors and purchasers.

The success of the business of manufacturing and selling patterns depends upon their distribution to the consumers by retail stores in which are sold piece goods from which women's and children's garments can be made and each of the respondents is in active competition with other producers of patterns in securing such retail stores to act as distributors for its product.

PAR. 7. There are in the United States approximately 50,000 merchants available for the sale of patterns. Of this number the respondent, Butterick Publishing Company, in the course of its business contracted with approximately 9,500 of such merchants under contracts of which true specimen copies are in evidence (Com. Ex. A, B and B–1), and which said contracts are in the following words and figures, to wit:

EXHIBIT A

_________________ 19___

THE BUTTERICK PUBLISHING CO.,
Butterick Building, New York, N. Y.

GENTLEMEN: Please sell and deliver to the undersigned purchaser, f. o. b. New York City, or at your Branch Office in ________________ the following goods and merchandise:

Butterick Patterns: An assortment of the new issues each month averaging $___________ net. Additional Patterns, as ordered. Discount, singly or in quantity, 50 per cent from retail prices.

_______ Section of Tills, _______ holes each, at _______ cents per hole. ___________ Ruled Postal Cards, at _______ cents each, addressed to you or your Branch Office, for ordering Patterns.

Butterick Fashion Sheets, monthly, as follows, beginning with _______ issue, 19____.

January____________________________	July____________________________
February___________________________	August__________________________
March______________________________	September_______________________
April______________________________	October_________________________
May________________________________	November________________________
June_______________________________	December________________________

Price, $1.00 per hundred. On lots of 500 or more of an issue, purchaser's advertisement printed on front page at an extra charge of $1.00 per lot. On lots of not less than 250 of an issue, purchasers business card printed on front space at an extra charge of 50 cents per lot. Smaller quantities furnished with a blank space for a hand stamp. No advertisement printed on less than 500 of an issue, and no business card printed on less than 250 of an issue.

One Rubber Hand Stamp, three lines, with ink pad, $1.00 Counter Catalogue, Pamphlet Edition: One subscription beginning with __________ issue, 19____, at $1.50 per annum.

Publications, as follows, at regular net prices, these quantities subject to modification:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
The Delineator______	______	______	______	______	______	______	______	______	______	______	______	______
Butterick Quarterly__	______	______	______	______	______	______	______	______	______	______	______	______
Butterick Transfer___	______	______	______	______	______	______	______	______	______	______	______	______

(For Embroidery, braiding, etc.)

NOTE.—Unsold copies of THE DELINEATOR AND BUTTERICK QUARTERLY are returnable for cash credit at cost.

Signs: _______ Outdoor and _______ Indoor. Send with first shipment. These signs are consigned and remain your property.

Shipping Directions: First shipment by ---------- Monthly goods by ----------

Transportation charges on all goods ordered or returned, payable by purchaser. All goods ordered (except the Subscription to the Counter Catalogue, and the Fashion Sheets, which are payable yearly in advance), will be paid for on or before the 15th of the month following their shipment.

The Patterns discarded from your catalogue will be exchangeable during the months of January and July for new paterns at nine-tenths of the sum paid for them, and all Patterns on hand at the expiration of the term of this order will be returnable for repurchase at three-quarters of cost in cash, if delivered to your New York office in good condition, payable within one month from date of delivery.

The undersigned agrees to receive and distribute gratuitously, regularly as issued, the Butterick Fashion Sheets during the term of this order; to use best endeavors to advance the sale of Butterick Patterns; not to sell, or permit to be sold, on the premises of the undersigned during the term of this agreement, any other make of patterns; not to sell Butterick Patterns except at label prices and to conserve your interests at all times.

This order is to continue in force for a term of three years from date, and from year to year thereafter until it shall be terminated by either party giving the other a three months' terminating notice in writing, at the expiration of any contract period, or within thirty days thereafter, this order to remain in force during said three months.

Failure or neglect by either party to perform any provision of this agreement will, at the option of the other, release the other party from all obligations hereunder.

Purchaser's Name ----------------------------
Address ----------------------------

We accept the above contract order, and hereby sell and agree to sell the goods specified upon the terms and conditions above set forth.

THE BUTTERICK PUBLISHING COMPANY,
By ----------

EXHIBIT B

THIS AGREEMENT, made this ----- day of ----------, 19--, between THE BUTTERICK PUBLISHING COMPANY, of New York, N. Y., party of the first part, and -------- of -------- party of the second part, witnesseth:

THAT THE PARTY OF THE FIRST PART AGREES: To grant, and does hereby grant, to the party of the second part the right to act as Special Agent for the sale of its Patterns in the -------- of --------, State of --------; To sell and deliver f. o. b. New York, or at its Branch office in -------- to said party of the second part, Patterns at 50 per cent of retail prices, and advertising matter at the prices specified on the reverse side hereof; To allow said party of the second part to return twice during each year (in January or February and in July or August) at nine-tenths of the sum paid for them, Patterns purchased hereunder in exchange for new Patterns to be shipped thereafter but not in exchange for other goods than Patterns; to permit the sum of ------ Dollars, part of the purchase price of patterns, to stand unpaid on its books as a "Standing Credit" to bear interest at 5 per cent per annum, payable semiannually on January 15 and July 15 of each year, and to become due and payable on the termination of this agreement, either by regular notice or otherwise.

THAT THE PARTY OF THE SECOND PART AGREES, In consideration thereof: To purchase from the party of the first part, and to keep on hand for sale at all times during the period this agreement continues in force, Patterns to the amount of ______ Dollars, at 50 per cent of retail prices; To allow said party of the first part, or any party delegated by it, to examine and take account of the Pattern Stock at any time it may desire; To purchase for free distribution Fashion Sheets from the party of the first part to a number not less than _____ Sheets of Butterick Fashions per annum; To pay to the party of the first part, for Patterns to be furnished by it as original stock, the sum of ________ dollars, as follows ____________________________________

And to pay for other goods purchased from said party of the first part on or before the fifteenth day of the month succeeding the month of purchase; To pay transportation on goods ordered or returned; To keep the Patterns on the ground floor of the building; To give or cause to be given by a lady attendant proper attention to the sale of the Patterns; To conserve the best interests of the party of the first part at all times; not to sell or permit to be sold on the premises of the party of the second part during the term of this contract, any other make of patterns; not to sell Butterick Patterns except at label prices; and not to remove the Pattern stock from its original location nor to assign it or the agency without the written consent of the party of the first part.

THAT IT IS MUTUALLY AGREED: This agreement shall remain in force for the term of two years from date and from year to year thereafter until it shall be terminated in the following manner: At any time within 30 days after the expiration of any contract term as herein specified, either party may give the other a notice, in writing, of a desire to terminate the agreement, and upon the expiration of 6 months following such notice, or within 1 week—either before or after—said expiration, all Patterns held by party of the second part shall be returned to party of the first part at its General Office in New York; and if all the provisions of this agreement shall have been performed by party of the second part, the party of the first part shall pay to said party of the second part, in current funds, within 30 days of the time of delivery to it of said Patterns, three-fourths of the amount charged for the same, but patterns returned, either for exchange or for redemption at the termination of the agreement, must have been procured *direct* from the party of the first part, *and not through any other party;* and Patterns stamped or marked (otherwise than by mark affixed by party of the first part at the time of sale), wet, opened or in any way damaged or defaced, shall not be returnable. Failure or neglect to perform the provisions of this agreement by either party shall, at the option of the other, release said other party from all obligations hereunder; and failure to require compliance with the strict letter of this agreement shall not constitute a waiver of any condition of the agreement, nor forfeit nor prejudice any rights hereunder.

IN WITNESS OF THIS AGREEMENT we have hereunto signed our names this _____ day of ________ 19__.

Done at ________________.

THE BUTTERICK PUBLISHING CO.

Per ______

310 Findings.

EXHIBIT B-1

THE BUTTERICK PUBLISHING CO., ________________ 19___
Butterick Building, New York, N. Y.

GENTLEMEN: Please sell and deliver to the undersigned Purchaser, f. o. b. New York City, or at your Branch Office in ________, the following goods and merchandise:

BUTTERICK PATTERNS as follows, at 50 per cent of retail price.

Original Stock, including _____ issue, $_______ net. New Patterns each month, $_______ net. Additional Patterns as ordered.

_____ Section of Tills, _____ holes each, at 8 cents per hole, with pattern stock inserted.

Butterick Fashion Sheets, monthly as follows, beginning with ______ issue, 19___.

January________	July________
February________	August________
March________	September________
April________	October________
May________	November________
June________	December________

Price, 75 cents per hundred. On lots of 500 or more of an issue, purchaser's advertisement printed on front page, at an extra charge of $1 per lot. On lots of not less than 250 of an issue, purchaser's business card printed on front card space at an extra charge of 50 cents per lot. Smaller quantities furnished with a blank space for hand stamp. No advertisement printed on less than 500 of an issue, and no business card printed on less than 250 of an issue.

Quarterly Catalogues, beginning with _____ issue, 19__, as follows:

Spring________	Autumn________
Summer________	Winter________

Price, $2 per hundred. Purchaser's card printed on front page on lots of 100 or more without extra charge. On lots of 500 or more of an issue, purchaser's card on front page and advertisement on last page at an extra charge of $2. On lots of 1,000 or more of an issue, no extra charge for purchaser's card and advertisement.

Publications, as follows, at regular net prices, these quantities subject to modification:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
The Delineator	____	____	____	____	____	____	____	____	____	____	____	____
Counter Catalogue (Monthly).	____	____	____	____	____	____	____	____	____	____	____	____
Butterick Fashions (Quarterly).	____	____	____	____	____	____	____	____	____	____	____	____
Butterick Embroidery Book).	____	____	____	____	____	____	____	____	____	____	____	____

NOTE.—Unsold copies of THE DELINEATOR, BUTTERICK FASHIONS and EMBROIDERY BOOK are returnable for cash credit at cost.

Shipping Directions: First shipment by _______ Monthly goods by _______.

Transportation charges on all goods ordered or returned, payable by purchaser.

All goods ordered, except the original pattern stock, will be paid for on or before the 15th of the month following their shipment. The purchase price of the original stock of patterns will be paid as follows:

$---------- on signing this contract order; $---------- on or before ------; the balance ($----------) is to remain unpaid until the termination of this arrangement, and to bear interest at 3 per cent per annum, payable semiannually on January 15th and July 15th of each year.

The Patterns discarded from your catalogue will be exchangeable during the months of January and July for new patterns at nine-tenths of the sum paid for them, and all Patterns on hand at the expiration of the term of this order will be returnable for repurchase at three-fourths of cost in cash, if delivered to your New York office in good condition, payable within one month from date of delivery.

The undersigned agrees: To purchase and keep on hand for sale at all times, Butterick Patterns to an amount not less than the original stock as above specified; to permit you, or your representative, to count the stock of patterns at any time, and to accept patterns sent to fill up any shortage; to receive and distribute gratuitously regularly as issued the Butterick Fashion Sheets and Quarterly Catalogues during the term of this order; to keep the patterns on the ground floor of the building; to give or cause to be given proper attention to the sale of Butterick Patterns; to use best endeavors to advance their sale; not to sell, or permit to be sold, on the premises of the undersigned during the term of this agreement, any other make of patterns; not to sell Butterick Patterns except at label prices; to conserve your interests at all times; and not to remove the pattern stock from its original location without your written consent.

This order is to continue in force for a term of 3 years from date, and from year to year thereafter until it shall be terminated by either party giving the other a 3 months' terminating notice in writing, at the expiration of any contract period, or within 30 days thereafter, this order to remain in force during said 3 months.

Failure or neglect by either party to perform any provision of this order will, at the option of the other, release the other party from all obligations hereunder.

Purchaser's Name------------------------------
Address------------------------------

We accept the above contract order, and hereby sell and agree to sell the goods specified upon the terms and conditions above set forth.

THE BUTTERICK PUBLISHING COMPANY,
Per ----------

Of the total business done by the respondent, the Butterick Publishing Company, 90 per cent is conducted under the contract heretofore set out and marked Exhibit B, and 10 per cent under the contracts marked Exhibit A and contract marked Exhibit B-1.

Of the said 50,000 merchants above mentioned, the respondent, the Standard Fashion Company, on January 7, 1920, had contracts outstanding and in force with approximately 6,000 of such merchants.

310 Findings.

True specimen copies thereof are in evidence (Com. Ex. C and D), and which said contracts are in the following words and figures to wit:

EXHIBIT C

STANDARD FASHION CO.,
12-14-16 Vandam Street, New York.
Please sell and deliver to undersigned purchaser by

________________________________ Express	at	New York Boston Chicago San Francisco
________________________________ Freight		

FASHION SHEETS

(Issued Monthly. $1.00 a hundred)

Jan______________	April____________	July____________	Oct_____________
Feb______________	May_____________	Aug_____________	Nov_____________
Mar______________	June____________	Sept____________	Dec_____________

On lots of 250 or more of one issue of Fashion Sheets, Merchant's Card printed at 50 cents for each printing.

On lots of 500 or more of one issue, Merchant's Card and Advertisement printed.

DESIGNERS

(Issued Monthly)

Jan______________	April____________	July____________	Oct_____________
Feb______________	May_____________	Aug_____________	Nov_____________
Mar______________	June____________	Sept____________	Dec_____________

STANDARD QUARTERLY.

(Issued Quarterly.)

Jan______________	April____________	July____________	Oct_____________
Feb______________	May_____________	Aug_____________	Nov_____________
March____________	June____________	Sept____________	Dec_____________

Designer and Standard Quarterlies to be furnished at regular agent's rates; unsold copies returnable for cash credit at cost.

One Copy monthly of the Large Catalogue for Counter Use at regular agent's rate.

$_______ at net prices of New Monthly Patterns as issued. (This order optional with purchaser.)

You will furnish additional patterns as ordered by me from time to time, and all patterns to be charged at 50 per cent off retail prices.

Commence these orders for monthly goods with the ______ issue and continue during term of this arrangement shipping by _____ Signs _______ (No charge for signs.)

_______ Printed Postal Cards, 2 cents each; 5 Line Rubber Stamp, Ink and Inking Pad, $1.00.

Fashion Sheets to be paid for yearly in advance. All other goods to be paid for on or before 15th of month succeeding month of shipment.

All transportation on goods ordered or returned payable by undersigned purchaser.

Each January and July, patterns discarded to be delivered to you for credit at nine-tenths cost in exchange for other patterns to be shipped thereafter.

At the termination of this arrangement in the manner provided below, and the conditions of this contract-order having been fulfilled by the purchaser, all patterns on hand to be returned for cash credit at three-quarters cost.

Patterns returned in exchange or for redemption must have been purchased hereunder and must be delivered to you in good condition.

The undersigned purchaser agreees to promote the sale of Standard Patterns by every reasonable means; to sell Standard Patterns only at label prices, and not to sell or permit to be sold on purchaser's premises, during the term of this contract-order, any other make of pattern.

This agreement to remain in force for a term of 3 years from date of first shipment, and from term to term thereafter until terminated by 3 months' written notice from either party to the other, giving at the expiration of the original, or any subsequent term, or within 30 days thereafter.

Purchaser's name ________

Date ______ Town ______ State ______

Received on account of above contract-order ______ Dollars, which order is hereby accepted.

STANDARD FASHION COMPANY,
Per __________

EXHIBIT D

STANDARD FASHION CO.,
12–14–16 Vandam Street, New York.

You will please sell and deliver to undersigned purchaser by

__________________________ Express } at New York, Boston, Chicago, San Francisco
__________________________ Freight }

______ Standard Patterns at net invoice prices, assortment to include styles of ______ issue, packed in ______ pigeonholes @ ____ per hole, ______ cabinets @ \$1.50 per drawer, to be paid as follows: __________________ the balance of the purchase price ______ to remain unpaid on your books while this arrangement continues in force, becoming due and payable at its termination, on which undersigned purchaser will pay interest at 5 per cent per annum due January 15th of each year.

FASHION SHEETS

(Issued Monthly. \$1.00 a hundred)

Jan______________	April____________	July_____________	Oct______________
Feb______________	May______________	Aug______________	Nov______________
March____ ______	June_____________	Sept_____________	Dec______________

On lots of 250 or more of one issue of Fashion Sheets, Merchant's Card printed at 50 cents for each printing.

On lots of 500 or more of one issue, Merchant's card and Advertisement printed.

DESIGNERS

Issued Monthly

Jan__________	April__________	July__________	Oct__________
Feb__________	May__________	Aug__________	Nov__________
March__________	June__________	Sept__________	Dec__________

STANDARD QUARTERLY

Issued Quarterly

Jan__________	April__________	July__________	Oct__________
Feb__________	May__________	Aug__________	Nov__________
March__________	June__________	Sept__________	Dec__________

Designers and Standard Quarterlies to be furnished at regular agent's rates; unsold copies returnable for cash credit at cost.

One Copy monthly of the Large Catalogue for Counter Use at regular agent's rate.

$______ at net prices of New Monthly Patterns as issued.

You will furnish additional patterns as ordered by me from time to time and all patterns to be charged at 50 per cent off retail prices. Commence these orders for monthly goods with the ____ issue and continue during term of this arrangement, shipping by ________ Signs ________ (No charge for signs.)

All goods to be paid for on or before 15th of month succeeding month of shipment.

All transportation on goods ordered or returned payable by undersigned purchaser.

Each January and July, patterns discarded to be delivered to you for credit at nine-tenths cost in exchange for other patterns to be shipped thereafter.

At the termination of this arrangement in the manner provided below, and the conditions of this contract-order have been fulfilled by the purchaser, all patterns on hand to be returned for cash credit at three-fourths cost.

Patterns returned in exchange or for redemption must have been purchased hereunder and must be delivered to you in good condition.

Pattern stock on hand to be maintained at or above $________ net.

The undersigned purchaser agrees to promote the sale of Standard Patterns by every reasonable means; to sell Standard Patterns only at label prices, and not to sell or permit to be sold on purchaser's premises, during the term of this contract-order, any other make of pattern. Pattern stock to be kept on ground floor of building.

This agreement to remain in force for a term of three years from date of first shipment, and from term to term thereafter until terminated by three months' written notice from either party to the other, given at the expiration of the original, or any subsequent term or within 30 days thereafter.

Purchaser's name ____________

Date ______ Town ______ State ______

Received on account of above contract-order ________ Dollars, which order is hereby accepted.

STANDARD FASHION COMPANY,
Per ____________________________

EXHIBIT D-1

MUTUAL AGREEMENT between the STANDARD FASHION COMPANY, of New York, first party, and ________ of ________ State of ______, second party.

FIRST PARTY hereby grants to second party an Agency for the sale of STANDARD PATTERNS for ________ in the City of ______, State of _____ for a term of 3 years from date hereof, and from term to term thereafter until this agreement is terminated, as hereinafter provided, and agrees to sell and deliver f. o. b. New York, or at its Branch Office in ________, to second party, STANDARD PATTERNS at a discount of 50 PER CENT, from retail prices, and advertising matter at the prices and on the condiions named on the reverse side hereof; also such other publications as may be issued by first party, at regular agent's rates; to allow second party to return discarded patterns semiannually, between January 15th and February 15th, and July 15th and August 15th, in exchange, at nine-tenths cost, for other patterns to be shipped at the time of return or thereafter, but not in exchange for other goods than patterns. Patterns returned for exchange must have been purchased by second party from first party direct and must be delivered in good order to first party at its General Office in New York.

SECOND PARTY agrees, in consideration of the above, to purchase from first party, for free distribution, STANDARD FASHION SHEETS to a number not less than ______ per annum, and HANDY CATALOGUES to a number not less than ______ per annum; and to pay transportation charges on all goods ordered or returned under this agreement; to purchase and keep on hand at all times, except during the periods of exchange specified above, ______ Dollars' value in Standard Patterns at net invoice prices, and to pay for a pattern stock of the amount stated above, to be selected by the first party, the terms of payment to be as follows: ______ Dollars at time of signing this contract, and ______ Dollars in 30 days after shipment of stock, ______________ the balance of the purchase price __________ Dollars to remain unpaid, as a Standing Credit, during the continuance of this agreement, and to become due and payable at its termination, second party to pay interest on this Standing Credit at the rate of 3 per cent per annum, on January 15th of each year; all other purchases to be paid for on or before the 15th day of the month succeeding the date of shipment.

Second party also agrees not to assign or transfer this agency, nor to remove it from its original location without the written consent of said first party, not to sell or permit to be sold on the premises of second party, during the term of this contract, any other make of patterns and not to sell Standard Patterns except at label prices. Second party further agrees to permit first party or its representative to take account of pattern stock whenever it desires, to pay proper attention to the sale of Standard Patterns, to conserve the best interests of the agency at all times, to reorder promptly all patterns sold, and to give the department a prominent position on the ground floor in the store.

EITHER PARTY, desirous of terminating this agreement, must give the other party three month's notice in writing, within thirty days after the expiration of any contract period as above specified, the agency to continue regularly during such three months. Upon expiration of such notice, second party agrees to promptly return to first party all Standard Patterns bought under this contract and then on hand, which first party agrees to credit on receipt in good order at three-fourths cost, paying to second party, within thirty days after receipt of same, in cash, any balance due. Neglect to return the pattern stock within two weeks after expiration of three months' notice shall relieve first party from all obligation to redeem the same. Failure to require compliance with the strict letter of this agreement shall not constitute a waiver of any condition nor forfeit nor prejudice any right hereunder.

It is hereby acknowledged by both parties that there are no verbal understandings between them conflicting with this contract.

Dated ______ 19__

Done at _____ State of _____

STANDARD FASHION COMPANY.
Per ____________________
(First Party)
____
(Second Party)

Of the total business done by respondent, the Standard Fashion Company, approximately 5 to 7 per cent was done under the contract above marked Exhibit C, 10 to 12 per cent under the contract marked Exhibit D, and 80 to 85 per cent under the contract marked Exhibit D-1.

Of the said 50,000 merchants mentioned above the New Idea Pattern Company, at the time of its consolidation with the respondent, the Designer Publishing Company, had contracts outstanding and in force with approximately 4,000 of such merchants. A true specimen copy is in evidence (Com. Ex. E) and which said contract is in the following words and figures, to wit:

EXHIBIT E.

To ____
Agency.
No.

THE NEW IDEA PATTERN COMPANY, a corporation of the State of New York, hereinafter called the Publisher, and _____, hereinafter called the Merchant, for good and valuable considerations hereby mutually acknowledged, have entered into an arrangement, the details of which are as follows:

THE PUBLISHER grants the Merchant the right to act as special agent for the sale of its Patterns in ______ and agrees to sell and deliver to the Merchant at Publisher's principal office in New York City or its western office in Chicago, Illinois, its Patterns, Fashion Sheets, etc., in the quantities and at the intervals hereinafter mentioned, and the Merchant hereby agrees to pay for same at the prices and in the manner hereinafter specified, and to pay all transportation expense on same.

THE MERCHANT agrees to purchase from the Publisher a first or original stock of patterns to the value of ________ Dollars ($______) net, including the ______ date styles and ____ case ____ to hold the same; also the new patterns as issued monthly thereafter, as follows:

LADIES PATTERNS: Bust Measures 32 34 36 38 40 42 44.
Waist 22 24 26 28 30 32 34.

MISSES' PATTERNS: 14 16 18 years. Girls' and Children's ______

MEN'S ______ one size______

THE PUBLISHER agrees to permit the sum of ________ Dollars ($______), part of the purchase price of the original stock of patterns, to stand unpaid on its books as a standing credit, to bear interest at two per cent per annum, payable semiannually on January 15th and July 15th of each year, and to become due and payable on termination of this agreement by regular notice or otherwise.

THE MERCHANT agrees to purchase from the Publisher and distribute gratuitously to his customers and the public ______ Fashion Sheets yearly, in the monthly quantities and at the prices stated below, with advertising privileges as outlined on reverse side hereof.

Jan________	$__________	May_______	$__________	Sept_______	$_________
Feb________	$__________	June_______	$__________	Oct________	$_________
Mar________	$__________	July_______	$__________	Nov________	$_________
Apr________	$__________	Aug_______	$__________	Dec________	$_________

THE PUBLISHER agrees to allow the Merchant to deliver to its New York, Chicago, St. Louis or San Francisco office for exchange twice each year, as per Discard List issued semiannually (in January and in July), any patterns purchased hereunder, in exchange at EVEN RATES, for new monthly patterns on standing order as above specified.

THE MERCHANT agrees to keep the patterns on the ground floor; to reorder by number and size all patterns sold, and maintain the pattern stock on hand at not less than the net amount of the original stock; to allow the Publisher to inventory said stock of patterns at any time, to accept and pay for patterns sent to fill up a shortage; to conserve the best interests of the agency at all times; to use best endeavors to sell New Idea Patterns, and to sell the same at regular retail prices; not to sell or permit to be sold on the premises of the Merchant during the term of this contract any other make of patterns; and not to remove the agency nor to assign it to any other party or parties, without the Publisher's written consent.

TERMS.—For patterns sixty (60) per cent of retail prices; for ______ Case containing ______ Pigeonholes each $______.

PAYMENTS for all purchases to be made on the fifteenth day of the month succeeding the month of shipment.

IT IS MUTUALLY AGREED that this arrangement shall remain in force for a period of five years from date hereof, and from term to term thereafter, until terminated in the following manner:

Either party may terminate this agreement by giving to the other at the expiration of any contract period above stated sixty days' notice in writing, this arrangement to continue during the said sixty days, after which time the Merchant agrees to deliver to the Publisher at its principal office in New York City all patterns then on hand, and all the Merchant's obligations herein being fulfilled, the Publisher will accept and give the Merchant credit for such patterns at three-fourths the amount originally charged, and will pay the Merchant in cash within thirty days thereafter any balance due. Patterns returned either for exchange or for repurchase at termination of agreement, must have been purchased direct from the Publisher, and must be delivered in good order. Failure by the Merchant to return the said patterns within twelve days after the expiration of the sixty days' notice to discontinue will relieve the Publisher of the obligation to receive or pay for the same.

It is hereby acknowledged by both parties that there are no verbal understandings between them conflicting with this contract.

Signed this ____ day of ____ 19___, At ____.

THE NEW IDEA PATTERN CO.

Original Shipment via______________ By ____________________________

Monthly Shipments via____________ Agent's Signature ______________

At the time of the consolidation of the Standard Fashion Company and the New Idea Pattern Company into the Designer Publishing Company, Inc., the Designer Publishing Company continued in force and effect the forms of contracts then in use by the Standard Fashion Company and the New Idea Pattern Company, notifying the distributors with whom such contracts had been made of the merger, and for the purpose of making new contracts or of renewing any contract then outstanding which it might have desired to renew, the Designer Publishing Company prepared and put into use forms of contracts, which said contracts are in the following words and figures, to wit:

EXHIBIT C-1

THE DESIGNER PUBLISHING COMPANY, INC.,

12-14-16 Vandam Street, New York.

Please sell and deliver to undersigned purchaser by

Express____________________________________
Freight____________________________________

at New York
Boston
Chicago
San Francisco
Toronto

FASHION SHEETS

Issued Monthly. ($1.00 a hundred)

Jan______________	April___________	July____________	Oct_____________
Feb______________	May____________	Aug_____________	Nov_____________
March___________	June___________	Sept____________	Dec_____________

On lots of 250 or more of one issue of Fashion Sheets, Merchant's Card printed at 50 cents for each printing.

On lots of 500 or more of one issue, Merchant's Card and Advertisement printed.

DESIGNERS

(Issued Monthly)

Jan.______________	April.____________	July.____________	Oct.____________
Feb.______________	May.____________	Aug.____________	Nov.____________
March.____________	June.____________	Sept.____________	Dec.____________

STANDARD QUARTERLY

(Issued Quarterly)

Jan.____________	April.____________	July.____________	Oct.______________
Feb.____________	May.____________	Aug.____________	Nov.______________
March.__________	June.____________	Sept.____________	Dec.______________

Designer and Standard Quarterlies to be furnished at regular agent's rates; unsold copies returnable for cash credit at cost.

One Copy monthly of the Large Catalogue for Counter Use at regular agent's rate.

$______ at net prices of New Monthly Patterns as issued. (This order optional with purchaser.)

You will furnish additional patterns as ordered by me from time to time, and all patterns to be charged at 50 per cent off retail prices.

Commence these orders for monthly goods with the ______ issue and continue during term of this arrangement, shipping by ______ Signs ______ (No charge for signs.)

______ Printed Postal Cards, 1 cent each; 5 Line Rubber Stamp, Ink and Inking Pad, $1.00.

Fashion Sheets to be paid for yearly in advance. All other goods to be paid for on or before 15th of month succeeding month of shipment.

All transportation on goods ordered or returned payable by undersigned purchaser.

Each January and July, patterns discarded to be delivered to you for credit at nine-tenths cost in exchange for other patterns to be shipped thereafter.

At the termination of this arrangement in the manner provided below, and the conditions of this contract-order having been fulfilled by the purchaser, all patterns on hand to be returned for cash credit at three-quarters cost.

Patterns returned in exchange or for redemption must have been purchased hereunder and must be delivered to you in good condition.

The undersigned purchaser agrees to promote the sale of your Patterns by every reasonable means; to sell your Patterns only at label prices, and not to sell or permit to be sold on purchaser's premises, during the term of this contract order, any other make of pattern.

This agreement to remain in force for a term of 3 years from date of first shipment, and from term to term thereafter until terminated by 3 months' written notice from either party to the other, given at the expiration of the original, or any subsequent term, or within 30 days thereafter.

Purchaser's Name__________

Date ______ Town ______ State ______

Received on account of above contract-order ________ Dollars, which order is hereby accepted.

THE DESIGNER PUBLISHING CO., INC.,
Per __________

EXHIBIT D-2

MUTUAL AGREEMENT between THE DESIGNER PUBLISHING COMPANY, INC. (Manufacturers of Standard New Idea Designer Patterns), of New York, first party, and ______ of ______, second party.

FIRST PARTY hereby grants to second party an Agency for the sale of its PATTERNS for ______ in the City of ______ for a term of 3 years from date hereof, and from term to term thereafter until this agreement is terminated, as hereinafter provided, and agrees to sell and deliver f. o. b. New York, or at its Branch Office in ______ to second party, its PATTERNS at a discount of FIFTY PER CENT, from retail prices, and advertising matter at the prices and on the conditions named on the reverse side hereof; also such other publications as may be issued by first party, at regular agents' rates; to allow second party to return discarded patterns semi-annually, between January 15th and February 15th, and July 15th and August 15th, in exchange, at nine-tenths cost, for other patterns to be shipped at the time of return or thereafter, but not in exchange for other goods than patterns. Patterns returned for exchange must have been purchased by second party from first party direct and must be delivered in good order to first party at its General Office in New York, or branch office in ______

SECOND PARTY agrees, in consideration of the above, to purchase from first party, for free distribution, FASHION SHEETS to a number not less than ______ per annum, and to pay transportation charges on all goods ordered or returned under this agreement; to purchase from first party and keep on hand at all times, ________ Dollars' value in Patterns at net invoice prices, and to pay first party for a pattern stock of the amount stated above, to be selected by the first party, the terms of payment to be as follows: ______ Dollars at time of signing this contract, and ______ Dollars in thirty days after shipment of stock ______ the balance of the purchase price, ________ Dollars to remain unpaid, as a Standing Credit, during the continuance of this agreement, and to become due and payable at its termination, second party to pay interest on this Standing Credit at the rate of five per cent, per annum on January 15th of each year; all other purchases to be paid for on or before the 15th day of the month succeeding the date of shipment.

Second party also agrees not to assign or transfer this agency, nor to remove it from its original location without the written consent of said first party, not to sell or permit to be sold on the premises of second party, during the term of this contract, any other make of patterns and not to sell Patterns except at label prices. Second party further agrees to permit first party or its representative to take account of pattern stock whenever it desires, to pay attention to the sale of Patterns, to conserve the best interests of the agency at all times, to reorder promptly all patterns as sold, and to give the department a prominent position on the ground floor in the store.

EITHER PARTY, desirous of terminating this agreement, must give the other party three months' notice in writing, within thirty days after the expiration of any contract period as above specified, the agency to continue regularly during such three months. Upon expiration of such notice, second party agrees to promptly return to first party all Patterns bought under this contract and then on hand, which first party agrees to credit on receipt in good order at three-fourths cost, paying to second party, within thirty days after receipt of same, in cash, any balance due. Failure to require compliance with the strict letter of this agreement shall not constitute a waiver of any condition nor forfeit nor prejudice any right hereunder.

It is hereby acknowledged by both parties that there are no verbal understandings between them conflicting with this contract. Dated -------- 19----

Done at ----------

THE DESIGNER PUBLISHING CO., INC.
Per--------------------------------
(First Party.)

(Second Party.)

EXHIBIT E-1

THE DESIGNER PUBLISHING COMPANY, INC. (Manufacturers of Standard New Idea Designer Patterns), a corporation of the State of New York, hereinafter called the Publisher, and ------ hereinafter called the Merchant, for good and valuable considerations hereby mutually acknowledged, have entered into an agreement, the details of which are as follows:

THE PUBLISHER grants the Merchant the right to act as special agent for the sale of its Patterns in ------, and agrees to sell and deliver to the Merchant at Publisher's principal office in New York City, or its branch office in ------ its Patterns, Fashion Sheets, etc., in the quantities and at the intervals herein mentioned, and the Merchant hereby agrees to pay for same at the prices and in the manner hereinafter specified, and to pay all transportation expense on same.

THE MERCHANT agrees to purchase from the Publisher a first or original stock of patterns to the value of -------- Dollars ($------) net, including the ------ dated style and ------ case ------ to hold the same; also the new patterns as issued monthly thereafter, as follows:

LADIES' PATTERNS: Bust Measures 32 34 36 38 40 42 44.
Waist 22 24 26 28 30 32 34.

MISSES' PATTERNS: 14 16 18 years.

GIRLS' AND CHILDREN'S ------

MEN'S ------ one size ------

THE PUBLISHER agrees to permit the sum of ------- Dollars ($------), part of the purchase price of the original stock of patterns to stand unpaid on its books as a standing credit, to bear interest at 5 per cent per annum, payable semiannually on January 15th and July 15th of each year, and to become due and payable on termination of this agreement by regular notice or otherwise.

THE MERCHANT agrees to purchase from the Publisher and distribute gratuitously to his customers and the public ------ Fashion Sheets yearly, in the monthly quantities and at the prices stated below, with advertising privileges as outlined on reverse side hereof.

Jan________	$_________.	May_______	$_________.	Sept_______.	$_________.
Feb________	$_________.	June______	$_________.	Oct________.	$_________.
Mar________.	$_________.	July______.	$_________.	Nov_______	$_________.
Apr________	$_________.	Aug_______	$_________.	Dec_______	$_________.

THE PUBLISHER agrees to allow the Merchant to deliver to its New York, Chicago, St. Louis, San Francisco or Toronto office for exchange twice each year, as per Discard List issued semiannually (in January and in July), any patterns purchased hereunder, in exchange at EVEN RATES, for new monthly patterns on standing order as above specified.

THE MERCHANT agrees to keep the patterns on the ground floor; to reorder by number and size all patterns sold, and maintain the pattern stock on hand at not less than the net amount of the original stock; to allow the Publisher to inventory said stock of patterns at any time; to accept and pay for patterns sent to fill up a shortage; to conserve the best interests of the agency at all times; to use best endeavors to sell Publisher's Patterns and to sell the same at regular retail prices; not to sell or permit to be sold on the premises of the Merchant during the term of this contract any other make of patterns; and not to remove the agency nor to assign it to any other party or parties, without the Publisher's written consent.

TERMS.—For patterns, sixty (60) per cent. of retail prices; for _____ case containing _____ Pigeonhole each $_____.

PAYMENTS for all purchases to be made on the fifteenth day of the month succeeding the month of shipment.

IT IS MUTUALLY AGREED that this arrangement shall remain in force for a period of five years from date hereof, and from term to term thereafter, until terminated in the following manner:

Either party may terminate this agreement by giving to the other at the expiration of any contract period above stated 60 days' notice in writing, this arrangement to continue during the said 60 days, after which time the Merchant agrees to deliver to the Publisher at its principal office in New York City, all patterns then on hand, and all the Merchant's obligations herein being fulfilled, the Publisher will accept and give the Merchant credit for such patterns at three-fourths the amount originally charged, and will pay the merchant in cash within 30 days thereafter any balance due. Patterns returned either for exchange or for repurchase at termination of agreement, must have been purchased direct from the Publisher, and must be delivered in good order. Failure by the Merchant to return the said patterns within twelve days after the expiration of the 60 days' notice to discontinue will relieve the Publisher of the obligation to receive or pay for the same.

It is hereby acknowledged by both parties that there are no verbal understandings between them conflicting with this contract.

Signed this _____ day of _______, 19__, at ___________

THE DESIGNER PUBLISHING CO., INC.,

By ________________________________

Agent's Signature _________________

Original Shipment via _____

Monthly Shipments via _____

and at the time of the service of the complaint herein, the respondent, the Designer Publishing Company, Inc., was distributing approximately 36 per cent of all of its patterns under contracts, form Exhibits E and E-1.

PAR. 8. The respondent, the Butterick Publishing Company, has been engaged in the business of manufacturing and selling patterns in interstate commerce for more than fifty years, and the respondents the Standard Fashion Company and the New Idea Pattern Company had each been engaged in a like business for more than thirty years, and the Designer Publishing Company, Inc., has been engaged in like business for about two years prior to May 24, 1920; and each of said respondents has used or is now using in the course of its business contracts as set out in paragraph 7 above, all of which contracts provide that the retail merchant shall maintain the resale price fixed by the respondents and that such retail merchant shall not sell or permit to be sold on his (the merchant's) premises any other make of pattern than that of the respective respondent.

PAR. 9. Each and all of the respondents in the preparation of patterns for sale and shipment encloses each pattern in an envelope on which is printed or stamped a price which is the resale or "label" price and each and every one of the respondents enter into contracts, agreements, and understandings in writing with the merchant or distributor of their patterns whereby said merchant or distributor contracts and agrees to sell the patterns manufactured and furnished by the respondent only at the resale price stamped on the said envelope in which the pattern is enclosed, and in order to enforce such resale price maintenance, each and every one of the respondents refuse to sell to any merchant or distributor who refuses to enter into such contracts.

PAR. 10. Each of said respondents has uniformly refused to permit any merchant, with whom it has a contract for the sale of its product, to sell or permit to be sold upon the premises occupied or controlled by said merchant, any make of pattern other than that of the respondent with whom the merchant has contracted, and has refused to permit any such merchant to sell the patterns manufactured by respondent except at the labeled prices and in order to enforce the said restrictive clause in their said contracts, each of the respondents has at diverse times notified merchants under contract with it, that it would enforce the restrictive clause in their contract and the respondents, the Butterick Publishing Company and the Standard Fashion Company have in the past brought suits and sought injunctive relief against diverse merchants whom they claimed had violated such restrictive clauses, and among such suits so brought was that of the Standard Fashion Company, petitioner, vs. Magrane-Houston Company, which was carried on writ of certiorari to the Supreme Court of the United States, and in which suit opinion was handed down April 10, 1922.[1] In this said suit there was before the court a contract of the said Standard Fashion Company identical in form to contract Exhibit D-1 and said contract was held by the Supreme Court to be a contract of sale, and within the provisions of Section 3 of the Clayton Act.

PAR. 11. There are in active competition with the respondents, other manufacturers of patterns, all of whom sell and distribute their patterns throughout the various States of the United States in interstate commerce, the principal competitors being—

McCall Pattern Company, organized in 1895, has approximately 7,000 active distributors;

Pictorial Review Pattern Company, organized 1904, 1905, has approximately 6,500 active distributors;

Home Pattern Company, organized 1905, has approximately 3,900 distributors;

People's Home Journal Pattern Company, organized about 1918, has approximately 300 active distributors;

May-Manton Patterns, organized about 1900. There is no evidence as to the number of distributors, but prior to 1920 they sold approximately five million patterns yearly;

Vogue Pattern Company made patterns in 1908 which were distributed only by mail orders until 1915, since which time it has distributed patterns through a selected list of retail merchants.

All of the large pattern companies have some periodical which may be termed its official organ, or means whereby the manufacturer disseminates to the public information concerning the merits of the designs for which it has patterns.

McCall Pattern Company has McCall's Magazine, circulation approximately 1,300,000.

Pictorial Pattern Company has the Pictorial Review, circulation approximately 1,800,000.

Home Pattern Company has the Curtis publication, The Ladies' Home Journal, circulation approximately 1,800,000.

People's Home Journal Pattern Company has the People's Home Journal, circulation approximately 900,000.

Vogue Pattern Company has The Vogue Magazine, circulation approximately 140,000.

The Designer Publishing Company, Inc., has the Designer, circulation approximately 400,000.

The Butterick Publishing Company has The Delineator, circulation approximately 900,000.

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[1] 258 U. S. 346.

PAR. 12. Prior to 1916 most of the pattern companies in the distribution of their patterns had in their contracts a clause restricting the distributor to the sale of the patterns manufactured by the particular company entering into the contract, and at the same time, during the five years prior to May 24, 1920, out of the 50,000 distributors hereinbefore mentioned, approximately 38,000 had exclusive dealing clauses in their contracts.

All pattern manufacturers print upon the envelope in which their respective patterns are offered to the public the price of said pattern.

Patterns range in price from ten cents to one dollar.

PAR. 13. There is in evidence (Respondent's Ex. 9) a tabulated list showing the distributors of patterns in the principal cities of over 100,000 inhabitants, and while the list is too long to incorporate in these findings, yet special attention is directed thereto, and from this list three cities are shown as an example.

In the cities of New York, Philadelphia, and Washington patterns of various manufacturers are distributed among the principal stores as follows:

NEW YORK.

Gimbel Bros., Butterick.
H. C. F. Koch & Son, Butterick.
R. H. Macy & Co., Pictorial, Home, McCall.
John Wanamaker, Pictorial, Home, McCall, People's Home Journal.
Stern Bros., Pictorial.
Bloomingdale Bros., Pictorial, Home, McCall, Excella.
B. Altman, Vogue.

PHILADELPHIA.

Gimbel Bros., Butterick.
Joseph Darlington, Butterick.
Strawbridge & Clothier, Designer, Pictorial Review.
N. Snellenberg & Co., Pictorial, Excella.
John Wanamaker, Home, Vogue.
Lit Brothers, McCall.
B. F. Dewers, McCall.

WASHINGTON.

Woodward & Lothrop, Butterick.
King's Palace, Butterick.
Lansburgh & Bro., Designer.
S. Kann's Sons Company, Pictorial, Home, Excella.
Goldenberg Department Store, McCall.
Palais Royal, Pictorial.
Sworzyn & Sons, Pictorial.

PAR. 14. The contracts used by the respondents are not contracts of agency or joint venture, but are contracts of sale and the restrictive covenants in said contracts substantially lessen competition and tend to create a monopoly.

CONCLUSION.

Under the facts and circumstances set forth in the foregoing findings, the use and employment by the respondents each and every one of them, of the restrictive covenants in their contracts were and are in violation of the provisions of Section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and were and are unfair methods of competition within the 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 by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, the testimony and evidence taken before a trial examiner of the Commission, the trial examiner's report upon the facts and the exceptions thereto, and upon argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of section 3 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and also 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;"

Now, therefore, it is ordered, That the respondents, Butterick Company, Federal Publishing Company, Standard Fashion Company, Butterick Publishing Company, New Idea Pattern Company, and Designer Publishing Company, Inc., their officers, directors, agents, and employees, while engaged in competition in interstate commerce among the several States and Territories of the United States and District of Columbia, cease and desist—

From selling the patterns manufactured by them or any of them, for resale to the public upon any contract, agreement or understanding that the distributor shall maintain the resale price fixed by the maker and/or that such distributor shall not deal in patterns produced by any other maker than the respondents or any of them.

It is further ordered, That the respondents shall within ninety (90) 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 with which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION
v.
HENRY LEDERER & BROS., INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1004—August 14, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of novelties, pens, etc., sold pens and pen points so manufactured and finished as to resemble gold in color and appearance, marked in indistinct words with the legend "Premo 141 Warranted"; with the intent and effect of misleading and deceiving the purchasing public into believing said products to be "14K," that is, 14 carat gold, and thereby of inducing the purchase thereof:

Held, That the sale of such misbranded pens, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that Harry Lederer & Brothers, Incorporated, and more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Harry Lederer & Brothers, Incorporated, is a corporation organized under the laws of the State of Massachusetts, with its principal office and place of business located in the city of Providence, in the State of Rhode Island. It is now and was at all times hereinafter mentioned, engaged in the manufacture and sale of novelties, pens, pencils, knives, jewelry and similar products, and in the conduct of its business causes the products so manufactured by it to be transported from its place of manufacture in the State of Rhode Island to wholesale and retail purchasers residing in other States of the United States. In the course of said business respondent has been and is now in competition with other persons, partnerships and corporations engaged in similar business in interstate commerce.

PAR. 2. Respondent in the course of its business as described in paragraph 1 hereof, for more than one year last past has sold interstate commerce pens or pen points which it manufactured or caused to be manufactured from certain metal or metals other than gold, through which such process of manufacture said product was finished to resemble gold in color and appearance and on which said product was marked, inscribed, or stamped in small and indistinct words and figures the following:

"Premo
141
Warranted"

The mark usually placed by manufacturers on pen points and similar articles to denote that the article is made from 14-carat gold is "14K," to which is usually added the word "Warranted." The mark used by respondent is used, and has been used, with the intent and purpose of deceiving the purchasing public, and by reason of its resemblance to the mark usually employed to denote 14-carat gold has the tendency and capacity to mislead and deceive, and does mislead and deceive the purchasing public into the erroneous belief that respondent's said products are made from 14-carat gold and to induce the public to purchase same in that belief.

PAR. 3. There are a considerable number of competitors of respondent who manufacture pens and pen points marked or stamped "14K," which said pens or pen points are composed of the required number of parts or proportions of gold, as indicated by said brand or stamp, used generally in the jewelry trade to denote or designate the percentage of gold as contained in said product, which said product is sold in competition with the product of said respondent.

PAR. 4. The above-alleged acts and things done by 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.

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, Henry Lederer & Bros., Inc., charging it with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance by its attorney, without filing an answer herein, and an agreed statement as to the facts having been made and filed in which it is stipulated that the facts therein recited may be taken as the facts of this proceeding and in lieu of testimony, and upon such facts the Commission may proceed further to make its report in said proceeding, stating its findings as to the facts and conclusions and entering its order disposing of the proceeding.

And thereupon this proceeding came on for final hearing without oral argument; the Commission, having duly considered the record and having now been fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Henry Lederer & Bros., Inc., is a corporation organized under the laws of the State of Massachusetts, with its principal office and place of business located in the city of Providence, in the State of Rhode Island. It is now and was at all times hereinafter mentioned engaged in the manufacture and sale of novelties, pens, pencils, knives, jewelry, and similar products, and in the conduct of its business causes the products so manufactured by it to be transported from its place of manufacture in the State of Rhode Island to wholesale and retail purchasers residing in other States of the United States. In the course of said business respondent has been and is now in competition with other persons, partnerships, and corporations engaged in similar business in interstate commerce.

PAR. 2. Respondent in the course of its business, as described in paragraph 1 hereof, for more than one year last past has sold in interstate commerce pens or pen points which it manufactured or caused to be manufactured from certain metal or metals other than gold, through which such process of manufacture said product was finished to resemble gold in color and appearance and on which said product was marked, inscribed, or stamped in small and indistinct words and figures the following:

"Premo
141
Warranted"

The mark usually placed by manufacturers on pen points and similar articles to denote that the article is made from 14-carat gold is "14K," to which is usually added the word "Warranted." The mark used by respondent is used, and has been used, with the intent and purpose of deceiving the purchasing public, and by reason of its resemblance to the mark usually employed to denote 14-carat gold, has the tendency and capacity to mislead and deceive, and does mislead and deceive the purchasing public into the erroneous belief that respondent's said products are made from 14-carat gold, and to induce the public to purchase same in that belief.

PAR. 3. There are a considerable number of competitors of respondent who manufacture pens and pen points, marked or stamped "14K," which said pens or pen points are composed of the required number of parts or proportions of gold, as indicated by said brand or stamp, used generally in the jewelry trade to denote or designate the percentage of gold as contained in said product, which said product is sold in competition with the product of said respondent.

CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the agreed statement as to the facts made and filed herein, in lieu of the testimony and 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, Henry Lederer & Bros., Inc., its officers, agents, and employees, cease and desist from:

Selling or offering to sell in interstate commerce pens or pen points made from metal or metals other than gold and finished to resemble gold in color and appearance, bearing thereon the following inscription:

"Premo
141
Warranted"

or any other device or mark calculated to indicate to the purchasing public that said pens are made from or contain gold.

FEDERAL TRADE COMMISSION

v.

RALPH E. DINGS AND LYON S. SCHUSTER, A PARTNERSHIP DOING BUSINESS UNDER THE NAME AND STYLE OF DINGS AND SCHUSTER.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1014—August 14, 1923.

SYLLABUS.

Where a firm engaged in the manufacture and sale of paints, varnishes, shellac and shellac substitutes, labeled, branded, advertised and sold a product, not composed solely of shellac gum cut in alcohol, "White Shellac"; with the capacity and tendency thereby to mislead and deceive purchasers and the trade into believing said product to be composed solely of genuine shellac gum cut in alcohol and thereby to induce the purchase thereof, and with the effect of so doing in the case of a substantial part of the purchasing public:

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

COMPLAINT.

Acting in the public interest 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 charges that Ralph E. Dings and Lyon S. Schuster, a partnership doing business under the name and style of Dings & Schuster, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, in violation of the provisions of Section 5 of said act, and states its charges in that respect as follows:

PARAGRAPH 1. Ralph E. Dings and Lyon S. Schuster are partners trading under the name and style of Dings & Schuster, with their plant and business office at Long Island City in the State of New York. They are, and at all times hereinafter mentioned, were engaged in the business of manufacturing, selling, and distributing paints, varnishes, shellac and substitutes for shellac to painters, jobbers, dealers, and the public generally throughout the eastern portion of the United States. In the course and conduct of their business said respondents cause their said products when sold to be transported from the State of New York to, into, and through other States of the United States and the District of Columbia to the purchasers thereof, and at all the times hereinafter mentioned are and have been in competition with other persons, partnerships, and corporations engaged in a similar business in interstate commerce.

PAR. 2. That shellac or shellac varnish, as commercially known and sold to jobbers, dealers, and the purchasing public, is composed solely of genuine shellac gum dissolved in alcohol, and is understood by said jobbers, dealers, and the purchasing public to be composed of genuine shellac gum dissolved in alcohol.

PAR. 3. The respondents in the course and conduct of their said business for more than one year last past have manufactured and sold to jobbers, dealers, and the purchasing public, in commerce, as aforesaid, throughout the States in the eastern portion of the United States by means of traveling salesmen, mail orders, or otherwise, a product composed solely of shellac gum dissolved in alcohol, and have labeled, branded, and advertised, and still do label, brand, and advertise the said product as "White Shellac"; that the said respondents also manufacture and sell in commerce, as aforesaid, and have manufactured and sold for more than one year last past a product composed of shellac gum and a large quantity of shellac gum substitutes such as rosin and similar ingredients, which product and containers thereof they label, brand, and advertise as "White Shellac" without indicating in any way whatever on such labels, brands, and advertisements that such last described product contains any other gum or ingredient, substitute for gum, than genuine shellac gum. The said labels, brands, and advertisements of said last described product are false and misleading and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and purchasing public, into the belief that said product so labeled, branded, and advertised by respondents is composed solely of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase same in that belief.

PAR. 4. There are a large number of manufacturers and distributors of varnish composed only of genuine shellac gum, cut in alcohol, who advertise, label, and sell the same under the name of "shellac" and also many manufacturers and distributors of shellac substitutes who do not advertise, brand, or label said shellac substitutes as "shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum cut in alcohol.

PAR. 5. The above acts and things done by respondents are all to the prejudice of the public and of respondents' 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.

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, Ralph E. Dings and Lyon S. Schuster, a partnership doing business under the name and style of Dings & Schuster, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having entered their appearance and filed an answer herein and having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to enter thereon, without the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That Ralph E. Dings and Lyon S. Schuster are partners trading under the name and style of Dings & Schuster, with their plant and business office at Long Island City in the State of New York. They are, and all times hereinafter mentioned were, engaged in the business of manufacturing, selling, and distributing paints, varnishes, shellac and substitutes for shellac to painters, jobbers, dealers, and the public generally throughout the eastern portion of the United States. In the course and conduct of their business said respondents cause their said products when sold to be transported from the State of New York to, into, and through other States of the United States and the District of Columbia to the purchasers thereof, and at all the times hereinafter mentioned are and have been in competition with other persons, partnerships, and corporations engaged in a similar business in interstate commerce.

PAR. 2. That shellac or shellac varnish, as commercially known and sold to jobbers, dealers, and the purchasing public, is composed solely of genuine shellac gum dissolved in alcohol, and is understood by said jobbers, dealers, and the purchasing public to be composed of genuine shellac gum dissolved in alcohol.

PAR. 3. That the respondents in the course and conduct of their said business for more than one year last past have manufactured and sold to jobbers, dealers, and the purchasing public, in commerce, as aforesaid, throughout the States in the eastern portion of the United States by means of traveling salesmen, mail orders, or otherwise, a product composed solely of shellac gum dissolved in alcohol, and have labeled, branded, and advertised, and still do label, brand, and advertise the said product as "White Shellac"; that the said respondents also manufacture and sell in commerce, as aforesaid, and have manufactured and sold for more than one year last past a product composed of shellac gum and a large quantity of shellac gum substitutes such as rosin and similar ingredients, which product and the containers thereof they label, brand, and advertise as "White Shellac" without indicating in any way whatever on such labels, brands, and advertisements that such last described product contains any other gum or ingredient, substitute for gum, than genuine shellac gum. The said labels, brands, and advertisements of said last described product are false and misleading and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and purchasing public, into the belief that said product so labeled, branded, and advertised by respondents is composed solely of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase same in that belief.

PAR. 4. That there are a large number of manufacturers and distributors of varnish composed only of genuine shellac gum, cut in alcohol, who advertise, label, and sell the same under the name of "shellac" and also many manufacturers and distributors of shellac substitutes who do not advertise, brand, or label said shellac substitutes as "shellac" or otherwise indicate to the purchasing public that such substitutes are manufactured or composed of shellac gum cut in alcohol.

PAR. 5. That the brands, labels, and advertisements containing the words "White Shellac" used by the respondent upon the containers of the product composed of shellac gum and a large quantity of shellac gum substitutes, such as rosin and similar ingredients manufactured, sold, and shipped by them, as set forth in the foregoing findings, have the capacity and tendency to and do mislead and deceive a substantial part of the purchasing public into the belief that such product so labeled, branded, and advertised by the respondent is composed solely of genuine shellac gum dissolved in alcohol, and to induce said purchasers to purchase same in that belief.

CONCLUSION.

The practices of the 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 the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the 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, Ralph E. Dings and Lyon S. Schuster, copartners, doing business under the name and style of Dings & Schuster, and each of them, their agents, representatives, servants, and employees, cease and desist from directly or indirectly:

(1) Employing or using on labels or as brands for varnish not composed wholly, 100 per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "White Shellac" or the word "Shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums therein used clearly stated upon the label, brand, or upon the containers (e. g., "Shellac Substitute" or "Imitation Shellac" to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) Using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain 100 per cent shellac gum cut in alcohol, the words "White Shellac" or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient, or gum of which the varnish is composed with the percentages of all such substances, ingredients, or gums therein used clearly stated (e. g., "Shellac Substitute," or "Imitation Shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

It is further ordered, That the respondents shall file with the Federal Trade Commission, within 60 days from the date of this order, its report in writing, setting forth the manner and form in which this order has been conformed to, and shall attach to such report two copies of all circulars, advertisements, devices, or labels distributed or displayed to the public by the respondents in connection with the sale of their products in interstate commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION
v.
UNITED TYPOTHETAE OF AMERICA ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 459—August 17, 1923.

SYLLABUS.

Where a nation-wide organization of employing printers, which through a membership running into the thousands directed and controlled more than 50 per cent in volume of all the commercial printing business done in the United States, and which included among the objects set forth in its constitution, "to eliminate the evils of ignorant and ruinous competition"; in cooperation with its numerous branch and affiliated local organizations all over the United States

(*a*) Evolved, promulgated and installed a "standard cost finding system" in the establishments of employing printers, based on figures furnished by its members, through which they were supplied with uniform figures or standard costs for the different operations involved in the trade;

(*b*) Prepared and widely distributed a "price list" or "standard guide" in which were set forth a list of uniform selling prices and also percentages of profit recommended to be added to such costs in making prices or price estimates for work;

(*c*) Brought about, energetically fostered, and encouraged the use, both among its members and non-members, of said "standard cost system" and said "price list" or "standard guide"; and

(*d*) Approved and endorsed the work of its price list committee, and pledged them its support;

With the result that prices in the trade were cooperatively enhanced, fixed and maintained:

Held, That such practices, substantially as described, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the United Typothetae of America, its officers, its branch and affiliated local organizations and its members, all hereinafter referred to and who are all respondents herein, have been and are using unfair methods of competition in interstate commerce, in 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, United Typothetae of America, is a corporation organized under the laws of the State of New York, with headquarters and executive offices at Chicago, Ill.; that the respondent is the successor of a voluntary association of employing printers' associations and employing printers, known as the "United Typothetae of America," which was organized during the year 1887 and by succession has been in continuous existence, and so continues, from that date to the present time; that during the year 1913 the United Typothetae of America—the voluntary association—was amalgamated with the Ben Franklin Clubs of America, another association of employing printers, and thereafter continued under the name of "United Typothetae and Ben Franklin Club of America" until some time during the month of September, 1917, when the name was changed to the *United Typothetae of America;* that thereafter, to wit, on September 16, 1919, the respondent, United Typothetae of America, a corporation, succeeded to and took over all the rights and privileges of the voluntary association known as the United Typothetae of America, and said voluntary association thereupon ceased to exist; that the respective officers of the United Typothetae of America and their respective places of business are as follows, to wit:

(1) J. Linton Engle, Philadelphia, Pa., president;
(2) J. C. Acton, Toronto, Ontario, Canada, first vice president and chairman of executive committee;
(3) George K. Horn, Baltimore, Md., vice president;
(4) B. F. Schriber, Pueblo, Colo., vice president;
(5) R. B. Nelson, Chicago, Ill., vice president;
(6) Fred W. Gage, Battle Creek, Mich., treasurer;
(7) Edward T. Miller, Chicago, Ill., secretary;

that the United Typothetae of America is composed of numerous branch and affiliated local organizations, including, in addition to some not known to the Commission, the following:

(8) Capital District Typothetae, Albany, N. Y.;
(9) Fox River Typothetae, Appleton, Wis.;
(10) Mountain Typothetae, Asheville, N. C.;
(11) Atlanta Typothetae, Atlanta, Ga.;
(12) Augusta Typothetae, Augusta, Ga.;
(13) Austin Typothetae, Austin, Tex.;
(14) Baltimore Typothetae, Baltimore, Md.;
(15) Battle Creek Typothetae, Battle Creek, Mich.;
(16) Bay City Typothetae, Bay City, Mich.;
(17) Binghamton Typothetae, Binghamton, N. Y.;
(18) Birmingham Typothetae, Birmingham, Ala.;
(19) Bloomington Typothetae, Bloomington, Ill.;
(20) Boston Typothetae Board of Trade, Boston, Mass.;

(21) Bridgeport Typothetae, Bridgeport, Conn.;
(22) Buffalo Typothetae, Buffalo, N. Y.;
(23) West Jersey Typothetae, Camden, N. J.;
(24) Stark County Typothetae, Canton, Ohio;
(25) Charleston Typothetae, Charleston, S. C.;
(26) Charlotte Typothetae, Charlotte, N. C.;
(27) Chattanooga Typothetae, Chattanooga, Tenn.;
(28) Franklin Typothetae of Chicago, Chicago, Ill.;
(29) Franklin Typothetae of Cincinnati, Cincinnati, Ohio;
(30) Graphic Arts Club of Cleveland, Cleveland, Ohio;
(31) Columbia Typothetae, Columbia, S. C.;
(32) Columbus Typothetae, Columbus, Ga.;
(33) Columbus Typothetae, Columbus, Ohio;
(34) Dallas Typothetae, Dallas Tex.;
(35) Franklin Typothetae of Dayton, Dayton, Ohio;
(36) Des Moines Typothetae, Des Moines, Iowa;
(37) Typothetae Franklin Association, Detroit, Mich.;
(38) Duluth Typothetae, Duluth, Minn.;
(39) Typothetae of Elmira, Elmira, N. Y.;
(40) Erie Typothetae, Erie, Pa.;
(41) Everett Typothetae, Everett, Wash.;
(42) Fargo-Moorhead Typothetae, Fargo, N. Dak.;
(43) Flint Typothetae, Flint, Mich.;
(44) Typothetae of Fort Smith, Fort Smith, Ark.;
(45) Fort Wayne Typothetae, Fort Wayne, Ind.;
(46) Fort Worth Typothetae, Fort Worth, Tex.;
(47) Grand Rapids Typothetae, Grand Rapids, Mich.;
(48) Greenville Typothetae, Greenville, S. C.;
(49) Western Ontario Typothetae, Guelph, Ontario, Canada;
(50) Central Pennsylvania Typothetae, Harrisburg, Pa.;
(51) Hartford Typothetae, Hartford, Conn.;
(52) Typothetae of Haverhill, Haverhill, Mass.;
(53) Houston-Galveston Typothetae, Houston, Tex.;
(54) Southwestern Typothetae of Kansas and Oklahoma, Independence, Kans.;
(55) Indianapolis Typothetae, Indianapolis, Ind.;
(56) Jackson Typothetae, Jackson, Mich.;
(57) Jacksonville Typothetae, Jacksonville, Fla.;
(58) Hudson County Typothetae, Jersey City, N. J.;
(59) East Tennessee Typothetae, Johnson City, Tenn.;
(60) Kalamazoo Typothetae, Kalamazoo, Mich.;
(61) Graphic Arts Organization, Kansas City, Mo.;
(62) Knoxville Typothetae, Knoxville, Tenn.;

(63) Lansing Typothetae, Lansing, Mich.;
(64) Lima Typothetae, Lima, Ohio;
(65) Lincoln Typothetae, Lincoln, Neb.;
(66) Arkansas Typothetae, Little Rock, Ark.;
(67) Typothetae of Macon, Macon, Ga.;
(68) Marietta Typothetae, Marietta, Ohio;
(69) Memphis Typothetae, Memphis, Tenn.;
(70) Milwaukee Typothetae, Milwaukee, Wis.;
(71) Minneapolis Typothetae, Minneapolis, Minn.;
(72) Mobile Typothetae, Mobile, Ala.;
(73) Montgomery Typothetae, Montgomery, Ala.;
(74) Graphic Arts Section, C. M. A., Montreal, P. Q., Canada;
(75) Muskegon Typothetae, Muskegon, Mich.;
(76) Ben Franklin Typothetae of Muskogee, Muskogee, Okla.;
(77) Typothetae of Newark, Newark, N. J.;
(78) New Haven Typothetae, New Haven, Conn.;
(79) New Orleans Typothetae, New Orleans, La.;
(80) New Westminister Typothetae, New Westminister, B. C., Canada;
(81) New York Employing Printers' Association, New York, N. Y.;
(82) Tidewater Typothetae, Norfolk, Va.;
(83) Graphic Arts Association, Oklahoma City, Okla.;
(84) Ottawa Typothetae, Ottawa, Ontario, Canada;
(85) Pensacola Club, Pensacola, Fla.;
(86) Typothetae of Philadelphia, Philadelphia, Pa.;
(87) Typothetae of Western Pennsylvania, Pittsburgh, Pa.;
(88) Maine Typothetae, Portland, Me.;
(89) Portland Typothetae, Portland, Oreg.;
(90) Typothetae of Rhode Island, Providence, R. I.;
(91) Quebec Typothetae, Quebec, P. Q., Canada;
(92) Gem City Typothetae, Quincy, Ill.;
(93) Racine-Kenosha Typothetae, Racine, Wis.;
(94) Central North Carolina Typothetae, Raleigh, N. C.;
(95) Richmond Typothetae, Richmond, Va.;
(96) Rochester Typothetae, Rochester, N. Y.;
(97) Rockford Typothetae, Rockford, Ill.;
(98) Tri-City Manufacturing Printers' Association, Rock Island, Ill.;
(99) Saginaw Typothetae, Saginaw, Mich.;
(100) Employing Printers' Educational Association, San Antonio, Tex.;
(101) Typothetae of Savannah, Savannah, Ga.;
(102) Ben Franklin Club of St. Louis, St. Louis, Mo.;

(103) St. Paul Typothetae, St. Paul, Minn.;
(104) Anthracite Typothetae, Scranton, Pa.;
(105) Seattle Division, U. T. A., Seattle, Wash.;
(106) St. Joseph Valley Typothetae, South Bend, Ind.;
(107) Spokane Typothetae, Spokane, Wash.;
(108) Springfield Typothetae, Springfield, Mass.;
(109) Springfield Typothetae, Springfield, Ohio;
(110) Okanagan Press Guild, Summerland, B. C., Canada;
(111) Syracuse Typothetae, Syracuse, N. Y.;
(112) Tacoma Typothetae, Tacoma, Wash.;
(113) Florida West Coast Typothetae, Tampa, Fla.;
(114) Terre Haute Typothetae, Terre Haute, Ind.;
(115) Toledo Typothetae, Toledo, Ohio;
(116) Topeka Typothetae, Topeka, Kans.;
(117) Toronto Typothetae, Toronto, Ontario, Canada;
(118) Trenton Typothetae, Trenton, N. J.;
(119) Typothetae of Tulsa, Tulsa, Okla.;
(120) Typothetae of Utica, and Vicinity, Utica, N. Y.;
(121) Vancouver Typothetae, Vancouver, B. C., Canada;
(122) Waco Typothetae, Waco, Tex.;
(123) Typothetae of Washington, D. C., Washington, D. C.;
(124) Ben Franklin Typothetae of Wichita, Wichita, Kans.;
(125) Williamsport Typothetae, Williamsport, Pa.;
(126) Wilmington Typothetae, Wilmington, Del.;
(127) Ben Franklin Typothetae, Wilmington, N. C.;
(128) Triangle Typothetae, Winston-Salem, N. C.;
(129) Winnipeg Typothetae, Winnipeg, Manitoba, Canada;
(130) Worcester Typothetae, Worcester, Mass.;

that there are approximately 5,100 persons, firms, associations, or corporations engaged in the printing business and located in the various States of the United States, the District of Columbia, and the Dominion of Canada who are members of some one of the branch and affiliated local organizations of said United Typothetae of America, and by virtue of such membership in the branch and affiliated local organizations, are members of said National organization, said United Typothetae of America, and each such member of said branch and affiliated organizations is hereby made a respondent to this complaint, although the names of the vast majority of such members are unknown to the Commission, and it is, therefore, impossible, without manifest inconvenience and oppressive delay, to designate by name all such respondents to this complaint; the following, however, are known to this Commission, and are:

(131) Franc C. Sheiry, Washington, D. C.;
(132) E. F. Eilert, New York, N. Y.;

(133) Toby Rubovitz, Chicago, Ill.;
(134) Earl R. Britt, St. Louis, Mo.;
(135) William S. Pfaff, New Orleans, La.;
(136) Bert Swezea, Seattle, Wash.;

that said respondent, the United Typothetae of America, through its officers, its branch and affiliated organizations, and its members, represents, directs, and controls approximately 80 per cent in volume of all the commercial printing business in the United States.

PAR. 2. That the respondent, United Typothetae of America, maintains and operates a school of printing at Indianapolis, Ind., where it publishes monthly its official magazine, *Typothetae Bulletin*, and causes the same to be sent to its various members located in the different States of the United States, the District of Columbia, and the Dominion of Canada; that the respondent, United Typothetae of America, at its headquarters and executive office at Chicago, Ill., and at its district offices, which it operates and maintains in the various States of the United States, prints, publishes, and causes to be circulated to its members and to various other employing printers located in the different States of the United States, the District of Columbia, and the Dominion of Canada, literature relative to the "Standard Cost System" and "Standard Price List" (Typothetae Standard Guide) and various other publications and circulars; that many of the various members of the United Typothetae of America are employing printers, engaged in soliciting printing throughout the States of the United States other than the States of their respective domicile, in due course of interstate commerce, in direct and active competition with other persons, firms, and corporations similarly engaged, who are not members of respondent association.

PAR. 3. That respondent, United Typothetae of America, through its officers, its branch and affiliated local organizations and its members, inaugurated a campaign known as the "Three-Year Plan," the object of which is to collect assessments from manufacturers and merchants throughout the United States who sell paper print presses, type, ink, and other supplies to employing printers, and from associations allied to the printing industry, the money so collected to be applied to alleged educational purposes, but mainly to induce employing printers to use the uniform system of cost accounting and the "Standard Price List" compiled by the United Typothetae of America, through its officers, its branch and affiliated local organizations and its members, with the view of teaching the printer how to charge adequate prices for his work, so that the alleged "evils of ignorant and ruinous competition" might be eliminated, as stated in bulletins published by said respondent; that coercive methods have been used by respondent to obtain subscriptions to said "three-year plan" fund, in that there were published and circulated by respondent, monthly bulletins containing names and addresses of subscribers, in order that the employing printers could discriminate, in the purchase of supplies required by them, in favor of those who had subscribed to said fund and against those who had not so subscribed; that the publication of the lists of contributors, as aforesaid, has intimidated manufacturers and dealers in printers' supplies, and has caused them to contribute to said fund, against their will, in order to avoid being discriminated against by the members of said United Typothetae of America in the purchase of supplies required by them, the result of which has been that manufacturers and dealers in printers' supplies have been compelled to pay a bonus or gratuity, as a condition precedent to the sale of supplies to members of respondent association.

PAR. 4. That approximately 4,000 employing printers who are members of the United Typothetae of America, have adopted and are now using the uniform cost accounting system in their respective printing establishments, which respondent has established and designated as the "Standard Cost System"; that respondent, United Typothetae of America, has compiled a "Standard Price List" for the use of employing printers in arriving at the price to be charged for their work, which it has designated as the "Standard Price List" (Typothetae Standard Guide), and each member of the Typothetae is furnished a so-called "Standard Price List" (Typothetae Standard Guide), and the respondent, United Typothetae of America, through its officers and its branch and affiliated local organizations is constantly urging its members to adopt and use the same, and approximately 5,000 members of the Typothetae are now using said "Standard Price List," the effect of which is to establish a uniform schedule of prices among the members of respondent association and the printing industry in general; that the United Typothetae of America is constantly urging employing printers who are not members of the Typothetae to use the "Standard Price List" (Typothetae Standard Guide), and that there are now in use in the United States, the District of Columbia, and the Dominion of Canada approximately 6,100 of the "Standard Price List" (Typothetae Standard Guide); that these two devices, the "Standard Cost System" and the "Standard Price List" (Typothetae Standard Guide), which respondent is constantly urging employing printers to adopt and use, are not merely systems of cost finding, but devices, the intent and purpose of which are to establish a uniform scale of prices in the printing industry throughout the United States, and has a tendency unduly to suppress competition in the printing business in interstate commerce, and to create a monopoly directly affecting interstate commerce.

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, United Typothetae of America and others, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

Thereupon, the respondents having duly filed their answers, admitting certain allegations of said complaint and denying others and setting up certain new matters in defense, and hearings having been held before an examiner of the Commission theretofore duly appointed, and the Commission having offered evidence in support of the charges of said complaint, and said respondents having introduced evidence on their behalf, and the parties having rested, and attorneys for the respective parties having duly argued the issues in this proceeding, and having presented said issues herein to the Commission for final consideration and determination,

The Federal Trade Commission, having duly considered the record, 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. (*a*) The respondent, the United Typothetae of America, is a corporation organized under the laws of the State of New York, with headquarters and executive offices at Chicago, Ill. It is the successor to a voluntary association of employing printers' associations and employing printers known as the "United Typothetae of America," which was organized during the year 1887, and by succession has been in continuous existence and so continued from that date to the present time. During the year 1913 the United Typothetae of America, a voluntary association, was amalgamated with the "Ben Franklin Club of America," another association of employing printers, and thereafter continued under the name of the "United Typothetae and Ben Franklin Club of America" until some time during the month of September, 1917, when the name was changed to United Typothetae of America. Thereafter, to wit, on September 16, 1919, the respondent United Typothetae of America, a corporation, succeeded to and took over all the rights and privileges of the voluntary association known as the United Typothetae of America, and said voluntary association thereupon ceased to exist. The respective officers of the United Typothetae of America, and their respective places of business, at the time of the taking of testimony in this proceeding, were as follows:

J. Linton Engle, Philadelphia, Pa., president;
J. C. Acton, Toronto, Ontario, Canada, first vice president and chairman of executive committee;
George K. Horn, Baltimore, Md., vice president;
B. F. Schriber, Pueblo, Colo., vice president;
R. B. Nelson, Chicago, Ill., vice president;
Fred W. Gage, Battle Creek, Mich., treasurer;
Edward T. Miller, Chicago, Ill., secretary.

(*b*) The United Typothetae of America is composed of numerous branch and affiliated local organizations, including, in addition to some not known to the Commission, the following:

Capital District Typothetae, Albany, N. Y.;
Fox River Valley Typothetae, Appleton, Wis.;
Mountain Typothetae, Asheville, N. C.;
Atlanta Typothetae, Atlanta, Ga.;
Augusta Typothetae, Augusta, Ga.;
Austin Typothetae, Austin, Tex.;
Baltimore Typothetae, Baltimore, Md.;
Battle Creek Typothetae, Battle Creek, Mich.;
Bay City Typothetae, Bay City, Mich.;
Binghamton Typothetae, Binghamton, N. Y.;
Birmingham Typothetae, Birmingham, Ala.;
Bloomington Typothetae, Bloomington, Ill.;
Boston Typothetae Board of Trade, Boston, Mass.;
Bridgeport Typothetae, Bridgeport, Conn.;
Buffalo Typothetae, Buffalo, N. Y.;
West Jersey Typothetae, Camden, N. J.;
Stark County Typothetae, Canton, Ohio;
Charleston Typothetae, Charleston, S. C.;
Charlotte Typothetae, Charlotte, N. C.;
Chattanooga Typothetae, Chattanooga, Tenn.;
Franklin Typothetae of Chicago, Chicago, Ill.;
Franklin Typothetae of Cincinnati, Cincinnati, Ohio;
Graphic Arts Club of Cleveland, Cleveland, Ohio;
Columbia Typothetae, Columbia, S. C.;
Columbus Typothetae, Columbus, Ga.;
Columbus Typothetae, Columbus, Ohio;
Dallas Typothetae, Dallas, Tex.;

Franklin Typothetae of Dayton, Dayton Ohio;
Des Moines Typothetae, Des Moines, Iowa;
Typothetae Franklin Association, Detroit, Mich.;
Duluth Typothetae, Duluth, Minn.;
Typothetae of Elmira, Elmira, N. Y.;
Erie Typothetae, Erie, Pa.;
Everett Typothetae, Everett, Wash.;
Fargo-Moorhead Typothetae, Fargo, N. Dak.;
Flint Typothetae, Flint, Mich.;
Typothetae of Fort Smith, Fort Smith, Ark.;
Fort Wayne Typothetae, Fort Wayne, Ind.;
Fort Worth Typothetae, Fort Worth, Tex.;
Grand Rapids Typothetae, Grand Rapids, Mich.;
Greenville Typothetae, Greenville, S. C.;
Western Ontario Typothetae, Guelph, Ontario, Canada;
Central Pennsylvania Typothetae, Harrisburg, Pa.;
Hartford Typothetae, Hartford, Conn.;
Typothetae of Haverhill, Haverhill, Mass.;
Houston-Galveston Typothetae, Houston, Tex.;
Southwestern Typothetae of Kansas and Oklahoma, Independence, Kans.;
Indianapolis Typothetae, Indianapolis, Ind.;
Jackson Typothetae, Jackson, Mich.;
Jacksonville Typothetae, Jacksonville, Fla.;
Hudson County Typothetae, Jersey City, N. J.;
East Tennessee Typothetae, Johnson City, Tenn.;
Kalamazoo Typothetae, Kalamazoo, Mich.;
Graphic Arts Organization, Kansas City, Mo.;
Knoxville Typothetae, Knoxville, Tenn.;
Lansing Typothetae, Lansing, Mich.;
Lima Typothetae, Lima, Ohio;
Lincoln Typothetae, Lincoln, Nebr.;
Arkansas Typothetae, Little Rock, Ark.;
Typothetae of Macon, Macon, Ga.;
Marietta Typothetae, Marietta, Ohio;
Memphis, Typothetae, Memphis, Tenn.;
Milwaukee Typothetae, Milwaukee, Wis.;
Minneapolis Typothetae, Minneapolis, Minn.;
Mobile Typothetae, Mobile, Ala.;
Montgomery Typothetae, Montgomery, Ala.;
Graphic Arts Section, C. M. A., Montreal, P. Q., Canada;
Muskegon Typothetae, Muskegon, Mich.;
Ben Franklin Typothetae of Muskogee, Muskogee, Okla.;

Typothetae of Newark, Newark, N. J.;
New Haven Typothetae, New Haven, Conn.;
New Orleans Typothetae, New Orleans, La.;
New Westminster Typothetae, New Westminster, B. C., Canada;
New York Employing Printers' Association, New York, N. Y.;
Tidewater Typothetae, Norfolk, Va.;
Graphic Arts Association, Oklahoma City, Okla.;
Ottawa Typothetae, Ottawa, Ontario, Canada;
Pensacola Club, Pensacola, Fla.;
Typothetae of Philadelphia, Philadelphia, Pa.;
Maine Typothetae, Portland, Me.;
Portland Typothetae, Portland, Oreg.;
Typothetae of Rhode Island, Providence, R. I.;
Quebec Typothetae, Quebec, P. Q., Canada;
Gem City Typothetae, Quincy, Ill.;
Racine-Kenosha Typothetae, Racine, Wis.;
Central North Carolina Typothetae, Raleigh, N. C.;
Richmond Typothetae, Richmond, Va.;
Rochester Typothetae, Rochester, N. Y.;
Rockford Typothetae, Rockford, Ill.;
Tri-City Manufacturing Printers' Association, Rock Island, Ill.;
Saginaw Typothetae, Saginaw, Mich.;
Employing Printers' Educational Association, San Antonio, Tex.;
Typothetae of Savannah, Savannah, Ga.;
Ben Franklin Club of St. Louis, St. Louis, Mo.;
St. Paul Typothetae, St. Paul, Minn.;
Anthracite Typothetae, Scranton, Pa.;
Seattle Division, U. T. A., Seattle, Wash.;
St. Joseph Valley Typothetae, South Bend, Ind.;
Spokane Typothetae, Spokane, Wash.;
Springfield Typothetae, Springfield, Mass.;
Springfield Typothetae, Springfield, Ohio.;
Okanagan Press Guild, Summerland, B. C., Canada;
Syracuse Typothetae, Syracuse, N. Y.;
Tacoma Typothetae, Tacoma, Wash.;
Florida West Coast Typothetae, Tampa, Fla.;
Terre Haute Typothetae, Terre Haute, Ind.;
Toledo Typothetae, Toledo, Ohio;
Topeka Typothetae, Topeka, Kans.;
Toronto Typothetae, Toronto, Ontario, Canada;
Trenton Typothetae, Trenton, N. J.;
Typothetae of Tulsa, Tulsa, Okla.;

Typothetae of Utica and Vicinity, Utica, N. Y.;
Vancouver Typothetae, Vancouver, B. C., Canada;
Waco Typothetae, Waco, Tex.;
Typothetae of Washington, D. C., Washington, D. C.;
Ben Franklin Typothetae of Wichita, Wichita, Kans.;
Williamsport Typothetae, Williamsport, Pa.;
Wilmington Typothetae, Wilmington, Del.;
Ben Franklin Typothetae, Wilmington, N. C.;
Triangle Typothetae, Winston-Salem, N. C.;
Winnipeg Typothetae, Winnipeg, Manitoba, Canada;
Worcester Typothetae, Worcester, Mass.

(*c*) During the year 1918 there were approximately 2,127, during the year 1919 there were approximately 2,312, during the year 1920 there were approximately 4,989, and during the year 1921 there were approximately 5,046 persons, firms, associations, or corporations engaged in the printing business and located in the various States of the United States, the District of Columbia, and the Dominion of Canada who were members of some one of the branches and affiliated local organizations of said United Typothetae of America, and by virtue of such membership in the branches and affiliated local organizations were members of the national organization of said United Typothetae of America.

PAR. 2. The United Typothetae of America has members in every State of the United States, the District of Columbia, and Hawaii, in Canada, and in South America. The United Typothetae of America, through its officers, its branch and affiliated organizations and its members, represents, directs, and controls more than 50 per cent in volume of all the commercial printing business in the United States.

PAR. 3. Said respondent, United Typothetae of America, adopted the following declaration of policies:

Object of the organization.

(Article 2, Section 1, of the constitution) To foster trade and commerce in the printing industry; to reform abuses relative thereto; to protect trade and commerce from unjust and unlawful exactions; to diffuse accurate and reliable information among its members as to the standing of merchants, and other matters; to promote uniformity and certainty in the customs and usages of said trades and commerce, and of those having a common trade, business or financial interest; to settle differences and promote a more enlarged and friendly intercourse among its members, and between its members and the business world; and in general, to do such other and further lawful acts as may be found necessary and convenient.

(Section 3) To effect a thorough organization of the employing printers and allied employing trades of the United States, Canada, and Mexico, with a view to improving the conditions of the industry in every proper and lawful manner, * * *

(Section 4) To promote education in the printing trades by the instruction of apprentices; the preparation and publication of lesson sheets, text books and other like literature; the conduct of schools; the spread of information among its members; cooperation with institutions of learning engaged in vocational training; and to issue certificates of proficiency to students of educational courses.

(Section 5) To urge employing printers and allied employing trades to cooperate with one another; to eliminate the evils of ignorant and ruinous competition; to make the relationship of the entire printing trades harmonious, and to correct such further evils as may exist.

(Section 6) To spread a wider knowledge of the elements of cost and what constitutes a proper remuneration for services rendered to them, and that competition may be honorable, just and reasonable.

(Section 9) To employ competent men to install the standard uniform cost-finding system as approved and amended from time to time by the Cost Commission; to secure uniformity in the application of the system in the plants of its members; to urge its adoption in all printing plants everywhere, and by all the allied industries.

(Section 11) To create legislative committees both local and international, for the purpose of watching, promoting and furthering the legitimate interests of the industry.

Sections 12, 13, 14, and 15 provide for formation of mutual insurance companies, standardizing a code of ethics and trade customs, better trade relations between individual printers and between printers and other allied interests, providing for boards of arbitration and for forming local branches in various cities and towns throughout the country.

(Section 16) To employ the persons necessary for carrying out the work of organization in general.

(Section 17) To conduct such departments as may be necessary for carrying out the general objects and purposes of the association.

And Section 18 sets forth that the purposes of the association shall not be profit, but shall be service.

Membership.

(Article 5, Section 1) Any individual, partnership, firm, corporation or association engaged in the printing or any allied trade or craft, having proprietary interest therein and whose principals are not officers of labor organizations, may, upon application in the prescribed form and upon subscribing to the constitution and by-laws, and by receiving a majority vote of the executive committee, and by paying into the treasury the initiation fee and dues as herein provided, become a member of this association.

(Article 5, Section 2) Only members engaged in the printing business and operating either composition, press room or bindery, shall be eligible to attend the executive sessions of the conventions of the U. T. A., or to hold elective office in the U. T. A.

(Article 5, Section 3) Members who form "local associations" shall be known as "local members"; members not in "local associations" shall be known as "members at large"; members elected from allied trades or crafts shall be known as "allied trades members" or "allied crafts members."

(Section 5) A local association may comprise members in several cities or towns adjacent to each other; provided the radius from the city or town designated as local headquarters conforms to such regulations as may be established by the executive council.

(Section 6) When a local association has been formed, all members of the International Association within the above-prescribed limits of such local association may retain membership in the International only by affiliating with the local association.

Officers.

(Article 6, Section 1) The officers of this Association shall be a President, a first Vice President, three other vice presidents, a Treasurer and an Executive Committee of not to exceed 35 members, composed of one representative from each of the districts hereinafter provided for. * * * The Executive Committee shall be the board of directors of the corporation and shall have the control and management of the affairs, funds and property of the corporation.

By-Laws.

Article I. Fees and dues.

Section 1. Each local body and each individual firm where no local body exists, shall, upon admission to this association, and thereafter as members are admitted, pay into the treasury as an initiation fee a sum equal to Five Dollars ($5) for each membership in the local association: *Provided*, however, that the Executive Council shall have power to waive the payment of initiation fee in specific cases or localities when, in their judgment, the interests of this Association are best served by so doing.

Sec. 2. Each local body for each of its members, and each individual member where no local body exists, shall pay quarterly in advance into the treasury of this Association a sum equal to one-half (½) of one per cent (1%), or $5 per $1,000, on the average quarterly pay-roll for the previous year in all the composing, press, bindery and foundry departments: *Provided*, however, that local associations having an annual mechanical pay-roll of $3,000,000 or over, shall be regarded as maximum members, their dues to be $15,000 per year: *Provided*, further, that any existing contracts made under the Standard Organization Agreement shall not hereby be affected during its life or existence. For the sake of convenience in collection and in bookkeeping, these quarterly payments shall be in even dollars, the amount being that even number of dollars nearest to the exact figures.

SEC. 3. The maximum dues to be paid by any individual member of a local body to this Association shall be one hundred and fifty dollars ($150) per month, and the minimum dues shall be eighteen dollars ($18) a year, payable to this Association quarterly in advance.

Of the annual dues paid by each member, one dollar ($1) shall be applied in payment of one yearly subscription to the *Bulletin:* Provided, that any member whose annual dues exceed twelve dollars ($12) shall be privileged to have one dollar ($1) of each twelve dollars ($12) so paid apply in payment of a yearly subscription to the *Bulletin*, to be sent to such persons as he may designate.

(Article 4, Section 1) The Executive Committee shall, immediately after its election, elect a cost commission composed of seven members; * * * and the following committees: Credit, Legislative, Organization, Trade Matters.

In its code of ethics published in its constitution and by-laws the following appears:

Recognizing the fact that in the conduct of their business no individual or concern in any community can act regardless of his neighbors and competitors, and that while the spirit of competition has been so deeply imbedded in the human breast and so keenly sharpened by the methods of every day life as to cause it to enter into and influence every transaction, but at the same time believing there are methods of competition which are clean, honorable and legitimate, whereby we can compete without wronging others and without demoralizing the business in which we are engaged, this Association adopts the following rules and recommends them to the employing printers of the country:

Under Paragraph 5, it is stated that—

Every printing establishment should have a perfect system of ascertaining the actual cost of every job. It is in this way only that the business can hope to be relieved from the deleterious effects of guess prices. Such a system should not only ascertain the facts, but record them, so that they can be referred to understandingly and the information immediately ascertained.

PAR. 4. The United Typothetae of America maintains and operates a school of printing, at Indianapolis, Ind., where it publishes monthly its official magazine, *Typothetae Bulletin*, and causes the same to be sent to its various members located in the various States of the United States, the District of Columbia, and the Dominion of Canada. At the time of the taking of testimony in this proceeding, said Bulletin had a circulation of about 6,500.

PAR. 5. That many of the members of the United Typothetae of America are employing printers, extensively engaged in soliciting printing throughout the States of the United States other than the States of their respective domicile, and in shipping printed matter in interstate commerce in direct and active competition with other persons, firms and corporations similarly engaged who are not members of respondent Association.

PAR. 6. *Three-Year Plan.* The respondent, United Typothetae of America, through its officers, its branch and affiliated organizations and its members, inaugurated a campaign known as the "three-year plan." The object of the plan was to increase the membership of the Typothetae and to educate the employing printers by inducing them to use the standard system of cost accounting and the standard price list compiled by the Typothetae, with the view of teaching the printer how to charge adequate prices for his work, so that the alleged "evils of ignorant and ruinous competition" might be eliminated. The plan contemplated the raising of $150,000 a year for three years. Feeling that this was more than the printers could handle, they applied to the allied trades (manufacturers and merchants who sell paper, presses, type, ink and other supplies to employing printers) for help. The work of securing subscriptions began in 1916 and continued up until the late summer of 1918, when the final sum was realized. For the purpose of securing funds from the allied trades, lists containing names and addresses of subscribers to the plan were printed regularly in the Typothetae Bulletin, pamphlets and circulars showing the progress of the plan and also showing the names of endorsers and subscribers to the same were sent to thousands of printers throughout the various States of the United States. The Typothetae hired professional solicitors who approached the members of the allied trades with lists showing that competitors of the latter had already contributed to the plan.

PAR. 7. *Standard Cost Finding System.* The Standard Cost Finding System is a uniform cost accounting system based on the principle that the unit of cost is the hour sold, which the Typothetae has installed in the establishments of employing printers. This system is installed for members of the association at actual cost. Approximately 2,000 members of respondent association were using this cost-finding system at the time of the taking of testimony in this proceeding. Respondent, the United Typothetae of America, is constantly urging its members and other employing printers who are not members of the association, to install in their establishments this Standard Cost Finding System.

PAR. 8. *The Standard Guide.* This document is in loose-leaf book form, of convenient size, leather-bound, and with interchangeable leaves. It is compiled in accordance with the average costs of the composite cost statement known as "Form 9–h," and these cost systems are obtained from members who report monthly on this form, and the form is used by members following out the rules and regulations of the Typothetae in the use of its cost-finding system. The price list committee of the United Typothetae of America compiles the guide. This book has had various names. At one time it was called "The Price List," but it is now distributed under the title of "Standard Guide." It has two parts—one a commercial printing section, the other an estimating and general information section. The first part covers 33 kinds of commercial printing, such as letterheads, ruled billheads, invoices, statements, envelopes, tags and tag envelopes, blotters, die-cut cards, ordinary cards, tickets, good-grade cards, written letters, dodgers, auction and sale bills, society printing, law briefs and records, show printing, type work, constitutions and by-laws, window placards, counter cards, checks, drafts, notes, receipts, steel and copper plate engraving and printing, Government postal cards and stamped envelopes, blank books, stock certificates, street car cards, etc., covering the field of commercial printing thoroughly and uniformly.

The looseleaf sheets under the above headings and others in this book show the net cost stock per thousand, the printing from 250 to 5,000 sheets according to what is termed "1-up," that is, printed from type; prices from 7,500 up from one electro; from 25,000 up from three electros, and 50,000 up from seven electros. Each of these sheets covers classifications under these divisions of commercial printing just above referred to, with the appropriate prices for the same in each column, and in each column for the different numbers of copies of the character of printing covered by the heading of the sheet is given the price that is recommended by the United Typothetae of America to be charged for the same.

The prices in this list are based upon the actual average hour costs and actual average production for the various operations, plus 25 per cent profit, which amount of profit the Typothetae recommends should be charged. These suggested prices made up in this list are found by the Typothetae from the reports that are made by the individual master printers in their plants in compiling their costs on a form known as "9-h." Between 400 and 500 printers return these reports monthly.

If all printers using this price adopted the prices unmistakably set forth in the looseleaf sheets furnished by the Typothetae, all of them would reach the same price for the same character of printing.

This first portion covers all small items of printing that have been standardized. The Typothetae issues these sheets for any additional item of printing that they may standardize. It is stated in the foreword of this book that it is only through cooperation that the book will be the sum of the experience of the entire printing industry that it should be.

In the second part of this Standard Guide, directions are given for estimating on such general jobs as do not appear in the 33 classifications in the first part. It starts out with "Scales for General Printing."

Scales for General Printing Stock, Material, Outside Work.

> *Stock and Material.*—Carefully kept records show an average cost of 15% for handling stock and other materials. To the cost of stock delivered at the plant, plus handling charge, the following rates for profit are considered equitable:
> Amounts less than $100.00 add 25%.
> $100. 00 and less than $200. 00 add 24%.
> 200. 00 and less than 300. 00 add 23%.
> 300. 00 and less than 400. 00 add 22%.
> 400. 00 and less than 500. 00 add 21%.
> 500. 00 and over add 20%.
> Outside work should be figured at the same profit as paper stock.
> When customer furnishes paper stock it is suggested that a charge of 15% of its value be made for handling.
> When customer furnishes art work and engraving, charge for all necessary handling, proving, etc., at regular time rates.

On electrotyping on any run of 10,000 or more, charge is to be made for at least one set of electros, and on allowances for spoilage the appropriate percentage is given. On composition, the hour costs that the printer should charge are expressed in the appropriate amount of money applicable to this part of the general printing; so are mutually covered all of the different operations, with the appropriate price to be charged in each, covering the subject of general printing. On book composition, hand work, plain matter, appears the following:

> Literature or solid, manuscript or reprint copy, requiring type proof, $4.70 per 1,000 ems. This price includes composition, proof reading, distribution and office corrections. Author's alterations, make-up and lock-up for the foundry or press, to be charged extra.

And then are standardized other elements in book composition by hand, with the appropriate charge.

This book contains in this second part a small pamphlet entitled "Square Inch Basis for Hand Composition." The following statement is made in reference to the same:

> The following average production records were compiled in accordance with the actual time consumed in setting thousands of pieces of Hand Composition. These are offered to the printing industry as authentic production records of Hand Composition for use in making the layouts for advanced price and checking against office records in the interests of efficiency.

Pamphlet binding is covered in the estimating section of the book and is treated in the same way. The different elements of pamphlet binding are fully set forth and the appropriate charge, either in percentage or a completed composition in dollars and cents stated. For instance:

> Sewing books on machine, charge per M sections, $1.25.

The next subdivision of this part of the book relates to miscellaneous scales, and the next to ruling; the next to electrotyping and photo-engraving; and the last section to general information, with this statement:

> The following pages contain accurate tables and data which will prove time-savers to estimators and those having price calculations to make.

The record shows that approximately 500 members make the monthly return on the 9-h sheets, and with the aid of these 9-h sheets there is compiled in the general offices of the Typothetae a composite average cost.

At the time of the taking of testimony in this proceeding, between 5,000 and 6,000 printers in the United States were using the Standard Guide.

In charging for matter not contained in the Standard Guide, the Typothetae recommends that its members and other printers add to the actual average hour cost 25 per cent for profit.

Out of the dues paid by Typothetae members the Typothetae allocates $6 per member per year for the Price List furnished to the member. For extra copies the member pays, irrespective of any dues, the sum of $20 a copy and $5 a year for revisions. For all outsiders the price charged is $30. The revisions, when made, are furnished to each person having a Price List. For these revisions the nonmember pays $10 per year, and revisions are distributed approximately twice a month—sometimes one page, sometimes more, according to the necessities of revision, and the revision so distributed is accompanied with a circular showing how to use it and what it means.

The Guide or Price List has been in preparation approximately 10 years. It started in a small way—a few pages at first. It has been added to and added to and developed as time went on, and about three or four years ago the Typothetae started to sell the Guide to any who would apply to purchase it. The use of this book and its revisions is urged upon the members and others by advertising, by letters, by speeches, and by the field force of the Typothetae, who are sent all over the United States to show the members and the purchasers of the Guide how to use it. The allocation of $6 from the dues of a member to provide for the expense of the Guide was arrived at in a general way. An estimate is made of the number of members, of the expense of the department having in charge the printing of the Guide, and of other expenses incident to its compilation, and the amount arrived at is divided by the number of members, which produced the sum of $6 (it was at one time $10). The extra copies to members and the copies to nonmembers have an arbitrary price fixed by the Typothetae. The Price List, or Standard Guide, is distributed from the headquarters in Chicago, to all parts of the United States, the Dominion of Canada, and a number of places in other parts of the world. The Typothetae employs agents to sell the Standard Guide on a commission basis throughout the different States of the United States.

PAR. 9. *Locals.* In many of the locals the national organization has supplied the secretary, who is the executive operating head of the local. He is not a member of the Typothetae.

(*a*) In Portland, Oreg., the Typothetae supplies its present secretary and manager. He was formerly engaged in the printing business in Chicago, as assistant manager of the Chicago Local of the U. T. A., and was thoroughly familiar with the Typothetae operation. The Portland Typothetae was organized by Harry S. Stutt, a field representative of the U. T. A., June 1, 1918, and from that date until December, 1921, it was a charter division of the U. T. A. It resigned from the national organization in December, 1921, but this resignation was not accepted. The reason given for the resignation was that the dues, in the local's estimation, were too high for the benefit to be derived from the national association. This local has the following paragraph in its constitution:

> The Constitution and By-Laws, Code of Ethics and Regulations of the National Organization—the United Typothetae of America—shall be deemed a part of the regulations and laws of the Portland Typothetae.

The Portland local, owing to local conditions, labor, etc., could not get the prices called for by the Typothetae Standard Guide. It revised this Guide and published one of its own more suitable to local conditions, the title of which is, "Recommended Price List of Printing, compiled in accordance with the latest results obtained through the use of the Standard Cost Finding System." This price list follows the Standard Price List in all essentials, except some of the revisions in prices that it has made to meet their local conditions, and the set-up and arrangement of its pages.

Members of the Portland Typothetae receive the printed matter that the Typothetae distributes and some of them have the Typothetae Guide. The Portland Typothetae through its membership, prints, publishes, and sells printed matter in interstate commerce.

Most of the operations in interstate commerce are with the adjoining State of Washington.

The secretary of the Portland Typothetae performs the estimating for the members. When a customer calls in a printing office of a member of the Portland Typothetae to ask for a bid or estimate on a piece of work, the member of the Typothetae sends to the secretary a blank form properly filled out, upon which are listed the name of the customer, the department of the concern that may be asking for the bid, whether the printer who submits the matter to the secretary has ever produced the job before or not, and his estimate; and a rule of the local Typothetae requires him to make this report.

The secretary knows from the records kept in his office whether the particular job has ever been handled before by a member. If it has been, and other members of the Typothetae are asked to estimate upon it, or bid on it, the award is so handled that the member who previously had the job gets it again, or the customer will have to go out to a printer not a member of the Typothetae in order to get a competitive price. Eighty-five per cent, or possibly more, of the estimates compiled by the secretary are made from the Portland price list.

The secretary of the Portland Typothetae makes a report to each member at the end of each month, listing each job that the member has reported in to the office, upon which he has been asked to give a price.

The Portland Typothetae printed and distributed to its members a pamphlet publication entitled "The Portland Printing Industry." It is dated July 15, 1919, and contains the following:

First Year's Record of the Typothetae.

Here is something to take note of and digest. Sixty-seven firms, representing over 90 per cent of the invested capital, producing 95 per cent or over of all the printing done in the city, and all working in harmony for the betterment and improvement of the printing industry, is the record of the first year of the Typothetae existence. * * * The old cutthroat days have gone, having been relegated to the scrap heap, and in their stead are days of the standardization of prices based on accurate costs as found by cost systems, competition on an equitable and honest basis, operation of the policy of live and let live, and a regard for the rights of competitors. Education is responsible for a great deal of this. Too frequently, in the past, printers and salesmen of printing have resorted to "guesstimating," with the result that everyone who guessed gave a different price, driving the buyer, of course, to shopping in order to get the lowest price. That is one of the things that is passing out of style. Buyers are eliminating shopping practices, for they have found that printers quoting from one price list quote about the same price, and so they have discovered the best way is to send the job out and expect to be charged a fair price. This does two things: It relieves the printer of worrying over whether he is going to lose money on the job, and it saves the buyer wasted time spent in hunting the lowest price. When a prospective customer requires an estimate, the use of the price list makes estimates more uniform. One of the greatest mistakes has been to forget the little items, but in manufacturing an article every operation costs something. Care should be taken to include everything entering into the production of a job. Doing this will elevate the printing industry to its proper level.

Between 16 and 20 of the Portland printers, members of the Portland Typothetae, use the United Typothetae of America's Standard Cost Finding System in their plants. The local Typothetae secured the cost accountant from the Chicago office of the U. T. A. to install the system.

There are 67 members of the local Typothetae. The Chamber of Commerce of Portland sends all of its printing to the office of the secretary of the local Typothetae to distribute or divide up between the printers in Portland who are members of the Chamber of Commerce, on the basis of the number of memberships that the printers have in the Chamber of Commerce. This method seemed to meet the approval of the printers in the city of Portland, as it appears that the secretary of the Chamber of Commerce interviewed the printers who were not members of the Portland Typothetae but were members of the Chamber of Commerce, and they agreed to the plan.

If a member of the local Typothetae fails to get the full Typothetae price list price on a piece of work and it is brought to the attention of the officers by one who was competing with him, he is summoned to the office of the local, and there have been instances where he was brought before the board of directors for correction.

All members doing work for the Government or work for plants that are engaged indirectly in making war material were required to keep a special record of such work, so that same would be available for use when making application for priority.

At the meeting of the local Typothetae held June 25, 1918, the cost committee of the local, which had in charge the revision of the price list, recommended price lists for use of members. The price list was gone over and the use of same explained to the members. It was unanimously agreed that members of the association follow the recommendations of the cost committee regarding method of estimating on work. There was some discussion as to the price to be quoted where total was in odd costs, and it was resolved that the split should be on each five cents. If there was work to be done by one member for another, it was agreed that on the press work a discount of 20 per cent be allowed. Price lists were distributed to those present at the meeting.

A concerted effort was made by the Portland Typothetae to sell copies of its list in other places than the city of Portland. It sold these lists at $7 each and charged 10 cents per sheet for all changes or additions, and it did sell these lists, not only in the State of Oregon, but also in the State of Washington. The secretary-manager of the Portland Typothetae, on March 4, 1920, wrote a letter to Mr. Morgan, of the *Harrisburg Bulletin*, of Harrisburg, Oreg., in which the following appeared:

> Your question regarding solution of the problem of keeping printers from underbidding one another is indeed a difficult one to answer in a letter. From our two years' experience as a Typothetae organization we have not found that the matter of charging Typothetae prices has taken away much of our work from the city, and the matter of underbidding has, in all earnestness, almost entirely been eliminated. Our members have learned through experience that in order to make a living out of the printing business it is necessary to get a profit above cost of work.
>
> We believe that the use of the standard list on printing has helped greatly in bringing about such a condition, and we would be glad indeed to have you use our printing list, which is compiled in Portland, and to further invite any other printer in our locality to do likewise. The list is in looseleaf form and contains also the retail prices of paper from the five local paper houses. This list complete with cover is $15 for the first year, which includes all changes or additions for that year, and $10 for the second year.

Another letter to Seattle, Wash., written by the secretary-manager of the Portland Typothetae, on August 29, 1918, to Mr. Joseph

Anderson, care of Hotel Frye, Seattle, Wash., contained the following:

> In regards to the new price list for the Northwest coast cities, will say that I am putting in every possible spare moment I have in getting up such a list, but owing to the necessity of getting up a list that will not be criticised too severely, I am taking the time necessary in making it correct. I am expecting to send out proof sheets on part of it in a few days, after which the balance will come at regular intervals.

The secretary-manager of the Portland Typothetae, on July 15, 1919, sent to the Carlson Printing Company, Portland, Oreg., the following estimate:

> On your request we are embodying herein our estimate on the several jobs in question for the Salvation Army drive, as being a fair market price for those goods:

5,000 copies of a 16 page pamphlet, entitled "Back Home to Serve," printer to furnish cuts, total price	$277.40
15,000 official receipt books, as per sample herewith, total price	335.25
10,000 posters entitled "She Came Through Over There" (exclusive of engravings, which should be charged extra)	404.25
50,000 stickers entitled "I Came Through" same as sample, printed in five different lots of 10,000 each	83.16
5,000 stickers entitled "Home Service Campaign," gummed top and bottom	56.36
2,000 cards, "Extraordinary Announcement"	111.80

The record contains many other letters written from the Portland Typothetae, covering the uses of the price list, bills or invoices covering printing done under the allotment of the Portland Typothetae, firms who would be entitled to the prevailing discounts on paper, and other phases of official operation.

(*b*) Seattle, Wash.: The secretary of the Seattle local Typothetae was formerly a field man for the United Typothetae of America, and is familiar with the policies of the U. T. A., its Standard Cost Finding System, which he studied at Chicago, and with the Typothetae Standard Guide. The members of the local Typothetae (about 50) do approximately 70 per cent of the volume of printing done in the city of Seattle. About 25 of the members have installed cost systems in the various plants in Seattle.

The city of Seattle local publishes *The Seattle Composing Stick*, and it is the duty of the secretary to issue and edit that bulletin. This local has a blank form which is used by the member whenever he is asked to estimate on a job. It carries full information as to the character of the job, whether the customer is a new or old one, who the customer is, the date on which he is asked to estimate, and the time of the day, whether "a. m." or "p. m." This form, carrying all this detailed information, the member of the local immediately sends to the secretary of the local Typothetae, and the estimates and awards are made through the local Typothetae office according to the local rules. The record shows that 631 estimates were rendered members during the first quarter of the year 1922, and the total amount of work estimated was $99,231.52; also that 84 9-h sheets were made out and reported, and 30 cost systems completed.

The Seattle local, in its official publication, *The Seattle Composing Stick*, publishes monthly, on its last page, a composite statement of costs of printing for the month preceding each issue.

A former secretary of the Seattle local distributed to the members of the local a set of rules to govern the local; these rules were typewritten and were in code, and matters were determined according to provisions appearing in them, such as the imposition of fines on members, etc.; these were discussed by members and in executive meetings; though the record does not show their adoption by the executive committee; the distribution to the members took place in the latter part of 1920, and the following is a copy of them:

Filing.

1. All work amounting to over $10.00 upon which a (&) is asked must be reported into Central Office.
2. On work covered by a specific (&) in (&) list (&) may be made before calling Central Office but same must be reported as soon as possible thereafter. Report must be made even if order is place at time (&) is given.
3. When reporting work, members shall state whether previously done by them or not, and if so, when.
4. Members must renew their filings at or before the expiration of one calendar month from date of first filing; otherwise, the job will be considered as new work, and a change of (@) will be given if deemed necessary.
5. Where a member is allotted a low (&) and competing member is asked to (%) on any changed specifications, such matter must be reported to Central Office before any (&) is given.

Estimating.

1. Members may estimate jobs or not, as they prefer, but on jobs amounting to over $250.00 the (&) must be checked by the Estimating department before (*) to customer.
2. If there is competition on such a job and member selected to have low (&) does not report his (&) within twenty-four hours' time, next low member shall be privileged to set (&).

3. Members asked to estimate on any regularly issued work then being done by any other member shall take up the matter with Central Office before negotiating with customer.

Protections.

1. Members protected shall be protected as follows:
   On $100.00 or less, 8%.
   Over $100.00, 5%.
2. Where several are competing on the same job, those members protecting low (&) shall be given (&) in rotation of their being entitled to same.
3. Where several members are asked to ($) on the same job and member has been selected to (%) low (&), all others asked to ($) must put in ($).

Old work.

Work done since August 1, 1920, shall be considered old work.

1. Work having been previously done by a member shall be protected by all other members and shall be known as "old work."
2. In case a job is reported as "old" by more than one member, such member as had done it last, before August 1, 1920, shall be awarded the job.
3. In case a job is reported as "old" by a member having done it after August 1, 1920, and also as old work by some other member having done it between August 1, 1918, and August 1, 1920, such work will revert back to member having done it last before August 1, 1920.
4. Where a question arises as to whether a job is an old job, all records must be shown about job in question by member or members claiming it as an old job.
5. Where member gives (&) on an old job, giving customer benefit of standing matter, plates, etc., protection including such allowance besides regular percentage protection shall be given member.

New work.

New work is such as has not been done by any other member since August 1, 1918.

1. Should (&) be asked on work not having been done since August 1, 1918, such work shall be considered as new work.
2. All new competitive work shall be allotted on a pro-rated basis according to dues paid. Each $1.00 paid as dues to be considered as 1 unit.
3. Any new work on which more than one (7) is asked shall be considered competitive and allotted on regular quota basis.

Cost plus.

1. Members shall not do work which is or has been competitive on any cost plus basis.
2. No work taken on cost plus basis shall be taken at less than cost plus 25%, such cost is shown in (&) list which is arrived at by taking selling (&) and deducting 20%.

Ethics.

1. Members shall not refer to lack of equipment or ability to do any particular kind of work of any other members.
2. Immediately after the first of each month a report shall be compiled of all work reported into the Association during the previous month which has not been let, and the Secretary-Manager shall be authorized to visit the offices of the Association to trace said work. Members shall submit their books and the records so that this investigation may be of value.
3. All members, regardless of size of plant shall be entitled to as much new competitive work in dollars and cents as any other member according to dues paid.
4. Members knowing of action of other members contrary to the rules of the Association, shall report same to the Secretary-Manager.
5. Members shall be responsible for the actions of their employees.
6. Members shall not divulge the rules of the Association to buyers of (#) nor to nonmembers of the Association.

Addition to rules.

Any effort on the part of any member of the Association to induce a customer to change stock or specifications on a job after such a job has been filed shall be construed in the light of a cut in price.

Members asked to bid on reprint work not previously done by him, shall consider same old work and make every reasonable effort to protect member to whom such work rightfully belongs.

Dating from November 15, 1920, a fine is to be imposed on any member for the violation of the rules.

Add to rule #2, report must be made same day, even if order is placed at time price is given.

Any member who quotes on a job and fails to file same, shall, if job is figured too low, upon the request of the secretary withdraw his quotation and requote the price given by Central Office, which shall be 10% above the price quoted by member filing.

December 28, 1920.

All prices quoted on City Printing are to be quoted from the Franklin Printing Price List.

The following is obviously the key for decoding:

(&) —Price	($) —Report
(%)—Bid	(#)—Printing
(*) —Submitting	(@)—Quotation.

There are about 23 members of the Seattle local who use the U. T. A. Standard Cost Finding System. The Seattle local uses the Porte List as well as the Standard Typothetae Guide. The Porte List is another price list published in Salt Lake City. It has no connection with the U. T. A. The Seattle membership is furnished with copies of the Typothetae Standard Guide. Some of them also have the revised Guide that was published in Portland, and some of them have the Porte List. The membership in Seattle received the *Typothetae Bulletin* and other printed matter from the national organization in Chicago.

A printer in Seattle, and a member of the local at the time, made an estimate on a job, and another printer, also a member, also made an estimate. There was some confusion about the award of the job. The first printer claimed priority rights after the job had been given to the other printer. The matter was brought to the attention of the secretary of the local and he adjusted the matter by a payment to the first printer of $67, the amount that he claimed would have been the profit on the job. The award to the second printer was withdrawn and the job given to a third printer. The second printer, from whom the award was taken, paid a penalty, and these several transactions were managed and directed officially through the office of the secretary of the Seattle local, under the rules that were operating in the management of that body.

PAR. 10. The following extracts were taken from some of the issues of the *Bulletin*, the official publication of the United Typothetae of America:

Fargo, N. D., The Pierce Printing Co.:

> Our membership in the organization is valuable to us far beyond the cost, as a backbone stiffener for asking proper prices. We have used our membership chiefly to the extent of getting estimates on jobs that have come for question.

Holton, Kans., S. T. Osterhold:

> The membership in our organization is of greatest benefit to us because of the standardizing of prices.

Lincoln, Nebr., Jacobs, North & Co.:

> The greatest good that has come to our firm as the result of belonging to the organization is the raising of the cost of print-

ing to the standard cost of the organization, and still holding a goodly share of our business. This would have been impossible a few years ago.

Mitchell, S. Dak., Educator Supply Co.:

We have not taken much advantage of the National Society, and in a certain sense it has not been of great value to us. In another sense the organization of the local by your organization, in which all the printers of Mitchell have joined, has been of immense value to us, in that we have studied cost and have been free from the local cut-throat prices that have been formerly customary among the printers.

Providence, R. I., the Wm. R. Brown Co.:

We cherish our membership in the U. T. and F. C. of A. and we only hope that in the future years to come our system will be fully recognized and there will be no such thing as a cut-price printer.

Salt Lake City, the University Press:

We have been brought closer to the other firms selling printing. We have learned to place more confidence in the other fellow. On many lines we are getting better prices for our goods.

Washington, D. C., Franc E. Sheiry:

The most valuable result to me from my membership in the Typothetae is the increased profit I am making. Of course this increased profit must come from my own efforts and must come to every member from his own efforts. The simple fact that I am a member of the Typothetae pointed the way. When I first joined my anticipated benefit was hazy. The first thing that opened my eyes was the receipt of the "Standard Price List of Printing." This was a revelation to me. I immediately commenced to use it. I carried it back and forth on the street cars. The result was that I became familiar with it and I almost knew it by heart. I certainly knew how to find any information that it contained. I commenced immediately to charge $1.60 per hour for composition. * * * I increased my profit about $40.00 per week for the five or six weeks that I kept account of it.

Knoxville, Tenn.:

Printers have just issued a price list schedule for letter heads which is proving highly successful. It has put a stop to haggling over prices and business is just as good, with fair profits for the printer.

Chicago, Ill.:

Spot This Fact—And Act. * * * Don't try to meet the other fellows' or your own former prices. You only fool yourself.

The Standard System, intelligently used, will raise selling prices.

The average increase in prices which organization and the use of the Cost System brings about is easily 20%. Can any one maintain that the cost of membership in our organization which brings about such results is an expense?

Men in other lines have seen the vision and drawn themselves together in the spirit of friendliness and self-interest to combat the iniquitous cut-throat piracy and competition of bygone days.

St. Louis, Mo.:

A luncheon is held every Monday, where a report is given of the past week's business; and if any revisions are made in the price, we discuss the reason. We have found the printer very broadminded in this respect—some turning over their estimate blanks to us.

Harvard, Nebr.:

I have thought it might be a good idea if I could get a copy of the Standard Price List and use it to reinforce my cost sheets when I have any trouble with the job. If I could show them that I am charging according to the prices recommended by the National Typothetae, it might help to save argument and do away with any notion that I am practicing a hold-up game.

Seattle, Wash.:

Our organization is different. Not better, perhaps, than any other local, but works different. Few frills, but more directly getting at the practical purposes of a trade association, fairer prices. We maintain estimate and credit bureaus, weekly luncheons, weekly scale conferences, with an occasional session on "Who cut the price?"

Detroit, Mich.:

Prior to the Three-Year Plan each printer had his own price and there was competition that would surely undermine the trade in time, plus the loss of confidence among buyers. Now that we are working under the three-year-plan, prices are running more uniform, with larger profits. * * * Furthermore, the three-year plan is creating confidence among the printers themselves, thus encouraging them to get better prices for their work.

The hope of every printer in the country is to place his business on a non-competitive basis.

PAR. 11. The following extracts were taken from some of the Typothetae advertisements:

Standard Price List

THE PRINTER'S GUIDE AND REFERENCE BOOK OF SELLING PRICES

There is always an element of chance in figuring on a new job; but this is eliminated if the printer gets from the U. T. A. the Standard Price List. "The Book of Profits." * * * The correct selling price of a thing is quickly and safely determined from the Standard Price List.

Through the use of this book the printer may quote a profitable price on any kind of printed matter. * * * This little "Black Book" is in general use by the U. T. A. printers everywhere, making for more certain profits and more honorable competition.

One of the most important factors in bringing printers closer together is the Typothetae Standard Guide.

There is just one way to be sure always of consistent price and fair profit—Use your Typothetae Standard Guide as the basis for figuring on all kinds of printing.

A manufacturer need have no fear of a competitor if both ascertain their cost in a uniform way.

We are governed almost entirely by the Standard Price List in Billing our products.

PAR. 12. The following extracts were taken from *The Composing Stick*, the official publication of the Seattle Typothetae:

Add Ten Per Cent Until the Price List is Totally Revised.

It is incumbent upon all members to add ten per cent to all prices in the list, with the exception of U. S. Briefs.

If you were about to quote on a job bearing your competitor's imprint, what would you do? Why certainly! It's all in the "pull together."

Join the United Typothetae and you will learn that cooperation is trade. War is hell, and so is ignorant competition.

PAR. 13. Extracts from the verbatim reports of the meetings of the executive committee of the United Typothetae of America, held at Cincinnati, Ohio, September 23, 1918:

Committeeman E. H. James, Portland, Oreg., reporting from the Pacific Northwest:

One of the first things started was the universal use of the Standard Price List. The members were eager to have some definite selling list, and to-day, when you meet a Portland printer on the streets, you will find him carrying his little Black Bible with him, and they sell everything they can from this list. We are revising the list to meet local and abnormal conditions, and the members are very enthusiastic about using it.

* * * * * * *

We believe that the most important thing to be accomplished is to discourage shopping for prices, and to accomplish this we have agreed to have our Secretary-Manager estimate on all jobs amounting to over $10. Doing this, every little job isn't estimated on by a dozen or more printers. This means that on small work amounting to less than $50, customer gets the same price from everyone and will soon quit shopping.

We feel that in the short time our organization in Portland has been in existence we have accomplished a great deal, and are going to make some money in the printing business. We are glad to be affiliated with the National and expect to be able to report a 100% organization in a short time.

Seattle, Wash.:

As is well known, Seattle has had for many years, members in the United Typothetae of America. To-day they have a large membership, both in cylinder and platen division, working under separate management, together with a division as a whole under a separate management also. They maintain offices, with a secretary-manager who does all of the estimating for the printers, with an assistant.

Spokane, Wash.:

Spokane Typothetae was organized in July of this year with 28 members, which comprise about 95% of the total volume of business in this city.

Following are extracts taken from the verbatim report of the meetings of the executive committee of the United Typothetae and Franklin Clubs of America, held at Chicago, Ill., September 17, 1917:

Committeeman Fred W. Gage, Detroit, Mich.:

I believe, all over this broad land, when good, strong cooperation is backed up with cost-finding knowledge, which they are having in Detroit—plenty of it, and plenty of guts to charge prices, because they can get them. Now that is what they are doing down there. * * *

Committeeman George H. Gardner, Cleveland, Ohio:

Printers are getting their prices there. Dull business and the work of the Typothetae seem to have instilled a lot of backbone into them, in fact, and I think they are getting better prices for their work than at any time in the war history of the business in Ohio.

Committeeman William Green, New York, N. Y.:

We find it comparatively easy to get firms to join the organization there, but absolutely impossible to get any combination or gentleman's agreement or working scheme that will tide us over a crisis. In spite of the fact that we are paying a great deal more for our labor and for our materials, excepting in the matter of paper, it is almost impossible to get them to hold up prices.

Committeeman William Pfaff, New Orleans, La.:

We at one time tried in New Orleans to solve the situation by buying out the poor, antiquated, out-of-date, old-time printer and junking his plant. We did that with five plants, but they went the Scripture a little better—they made three blades of grass grow where there was but one before. We have four, five or six different new printing offices there that don't seem to understand that printing should be paid for adequately. One very successful young man there, a Hebrew, who started in a small way and has now put in a Miehle press, tells me the cost system is not worth the time, because he is charging less than I am he has grown all the time and has now put in a cylinder press. So much for your cost system.

Committeeman Eugene Saenger, Sioux Falls, S. Dak.:

The cost system has been installed in all the offices in Mitchell and in Sioux Falls. It is a 100% affair in Sioux Falls. I am pleased to say that one of the results of the installing of the cost system in these two cities has been that all the offices refused to bid on State work. We have absolutely quit that. The State, of course, is a larger owner, but they have been getting their work at such ridiculous rates that anyone who has a cost system doesn't care to bid. Business in South Dakota has been very good, and with the larger prices we are getting we should all make a good deal of money; but we find that the cost of doing business, both in labor and material, is so much greater, that really the net profits are not more than they were a few years ago.

Committeeman B. F. Scribner, Pueblo, Colo.:

There is the feeling that we have in some other towns where it seems impossible to maintain a Typothetae; there is a sort of a gentleman's agreement among the three or four printers that constitute the great majority of the production of that town. One fellow will call up the other and if one of his customers is asking for a bid will say to him frankly. "This man has asked me for a quotation on this job. I don't know why. He is probably peeved, and I don't know why and care less. What shall I quote him?" And that has worked very nicely.

Our town has got along beautifully. We had about the same experience that Mr. Pfaff had in New Orleans. We tried buying up some of the plants. That did not work very well, so they went to work and advertised the fact that there were plants there for sale, and that seemed to work beautifully to scare them out, in one or two of the plants, the smaller ones that were just big enough to bother you, as you feel and appreciate in Nebraska. The bigger plants were given this treatment: They were permitted to compete on work that was non-profitable, and the other plants would put a price on it. On any work that was over the head of plants of that kind, the big plants would get together and try to make up the loss on the smaller job. It worked out until three or four of us were eliminated, and one of them is in the insane asylum, worrying over financial trouble.

I received a communication as a member of this executive committee from a gentleman in Frisco, saying they had a complaint about the printers to the East of them, with their cost systems and everything else, when they came to figure on work that was going to the West. We have the same thing in our section. Because of the notice of the high wage scale, the printers, especially, will fall in and make prices that absolutely cannot be met, and take considerable work out. The outlook is uncertain, but the shrewd employers are proceeding cautiously, being forearmed by being forewarned. It is certainly to be hoped that the success of the three-year plan will assure our entire section the benefits of aggressive work and a close co-operation with employing printers, that the business may not suffer. I really believe that the biggest argument that the Typothetae could possibly advance as to its reason for existence, not ignoring what it has done in the line of cost accounting and cost finding, would be some sort of an operation of this three-year plan through personal contact with a man that knew what he was talking about.

Following is an extract taken from the verbatim report of the minutes of the meeting of the executive council of the United Typothetae of America, held in Chicago, July 15, 16, and 17, 1920:

Chairman: * * * You folks all understand about the Baltimore situation on the School of Printing—that money that they have raised in the unions, $30,000 to buck it. Here is a thing that we are starting in Washington that may be of interest to some of you people. The American Red Cross have asked on a number of occasions for estimates from a number of Typothetae members, and the work has been given out in all cases but one to printers outside of Washington. Our local secretary took up the question with them of who bid on it. We wrote them this letter on July 12, addressed to the general manager down there. This letter is written over the signature of our executive secretary of the Typothetae of Washington. "I endeavored to obtain from Mr. Benjamin," etc.

Mr. Finlay: "They never used 5,000,000 in Washington, did they?

Chairman: "Oh, no, they were used all over the country. The thought in my mind is, that if our printers would put the estimating game on a more dignified basis, there would probably be less shopping. In other words, a man will come to President Green and ask for a bid on 80-pound book, and somebody else will get a price on 70-pound book and make the bid accordingly and get the job, and Bill Green never knows anything about it. The American Society of Architects have definite rules and are very strict as to how definite competitive designs may be submitted, and it seems to me mighty good work. We have been too d——d easy in giving out estimates.

Then, also, the Standard Price List, which is proving to be an authority on the price of printing, made up from the annual cost reports, is becoming very valuable, more so than it ever has been before, and they are getting out now what is called the "square-inch basis of measure." We understand we can have cost records on the presses and get the output on the product, but when it comes to the hand composition, everything has been guess work, and that is why there has been such a great variety or variance in the estimates made, even though they have their cost system. But by the method being devised now, it will be possible for all of the printers to estimate on a square-inch basis made from absolute records, so we will all estimate about the same way. In order to have the work go on more intensively, there is a little publication, "The Standard Typothetae Guide," a little folder that goes out as a piece of mail, and with that goes revisions and additions to the price list gotten out the first and the 15th of every month. There are something like 10,000 of these lists in use today, and there is no question but what the standard cost system, as disclosed in its results by the annual composite reports—and, by the way, the last ones are over $30,000,000—and from which this price list is made up—there is no question but what those things have been the greatest influence ever known in the printing industry for improving conditions up to this time. If you will compare them the last ten years you will notice this has that effect.

Following is an extract taken from the report of the meeting of the executive council of the United Typothetae of America, held in Chicago, Ill., April 18 and 19, 1919:

Estimating Service.

The membership is apparently realizing more and more the great value of the Estimating Department and making greater use of it month by month. The amount reported in estimates made for members during the month of March was $122,516.96. A very large proportion of these estimates were made at the request of members for the purpose of disposing of disputes with customers as to the proper charge for completed orders.

Price List Committee.

It was unanimously moved and carried:

That the price list committee of the United Typothetae of American be advised that it is the sense of the executive council that they proceed with their work until we put out as good a printing price list as any price list in the world, and back them up to the limit.

CONCLUSION

That the practices of said respondents, under the conditions and circumstances described in the foregoing findings as to the facts, 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, and the answer of the respondent, the testimony, and the evidence, and the Commission having made its findings as to the facts with 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 respondent, United Typothetae of America, its officers, as individuals and as officers of the United Typothetae of America; its members, individually and as members of the United Typothetae of America; its branch and affiliated local organizations including, in addition to some not known to the Commission, the following:

Capital District Typothetae, Albany, N. Y.,
Fox River Valley Typothetae, Appleton, Wis.,
Mountain Typothetae, Asheville, N. C.,
Atlanta Typothetae, Atlanta, Ga.,
Augusta Typothetae, Augusta, Ga.,
Austin Typothetae, Austin, Tex.,
Baltimore Typothetae, Baltimore, Md.,
Battle Creek Typothetae, Battle Creek, Mich.,
Bay City Typothetae, Bay City, Mich.,
Binghamton Typothetae, Binghamton, N. Y.,
Birmingham Typothetae, Birmingham, Ala.,
Bloomington Typothetae, Bloomington, Ill.,
Boston Typothetae Board of Trade, Boston, Mass.,
Bridgeport Typothetae, Bridgeport, Conn.,
Buffalo Typothetae, Buffalo, N. Y.,
West Jersey Typothetae, Camden, N. J.,
Stark County Typothetae, Canton, Ohio,
Charleston Typothetae, Charleston, S. C.,
Charlotte Typothetae, Charlotte, N. C.,
Chattanooga Typothetae, Chattanooga, Tenn.,
Franklin Typothetae of Chicago, Chicago, Ill.,
Franklin Typothetae of Cincinnati, Cincinnati, Ohio,
Graphic Arts Club of Cleveland, Cleveland, Ohio,
Columbia Typothetae, Columbia, S. C.,
Columbus Typothetae, Columbus, Ga.,
Columbus Typothetae, Columbus, Ohio,
Dallas Typothetae, Dallas, Tex.,
Franklin Typothetae of Dayton, Dayton, Ohio,
Des Moines Typothetae, Des Moines, Iowa,
Typothetae Franklin Association, Detroit, Mich.,
Duluth Typothetae, Duluth, Minn.,
Typothetae of Elmira, Elmira, N. Y.,
Erie Typothetae, Erie, Pa.,
Everett Typothetae, Everett, Wash.,
Fargo-Moorhead Typothetae, Fargo, N. Dak.,
Flint Typothetae, Flint, Mich.,
Typothetae of Fort Smith, Fort Smith, Ark.,
Fort Wayne Typothetae, Fort Wayne, Ind.,
Fort Worth Typothetae, Fort Worth, Tex.,

345 Order.

Grand Rapids Typothetae, Grand Rapids, Mich.,
Greenville Typothetae, Greenville, S. C.,
Western Ontario Typothetae, Guelph, Ontario, Canada,
Central Pennsylvania Typothetae, Harrisburg, Pa.,
Hartford Typothetae, Hartford, Conn.,
Typothetae of Haverhill, Haverhill, Mass.,
Houston-Galveston Typothetae, Houston, Tex.,
Southwestern Typothetae of Kansas and Oklahoma, Independence, Kans.,
Indianapolis Typothetae, Indianapolis, Ind.,
Jackson Typothetae, Jackson, Mich.,
Jacksonville Typothetae, Jacksonville, Fla.,
Hudson County Typothetae, Jersey City, N. J.,
East Tennessee Typothetae, Johnson City, Tenn.,
Kalamazoo Typothetae, Kalamazoo, Mich.,
Graphic Arts Organization, Kansas City, Mo.,
Knoxville Typothetae, Knoxville, Tenn.,
Lansing Typothetae, Lansing, Mich.,
Lima Typothetae, Lima, Ohio,
Lincoln Typothetae, Lincoln, Nebr.,
Arkansas Typothetae, Little Rock, Ark.,
Typothetae of Macon, Macon, Ga.,
Marietta Typothetae, Marietta, Ohio,
Memphis Typothetae, Memphis, Tenn.,
Milwaukee Typothetae, Milwaukee, Wis.,
Minneapolis Typothetae, Minneapolis, Minn.,
Mobile Typothetae, Mobile, Ala.,
Montgomery Typothetae, Montgomery, Ala.,
Graphic Arts Section, C. M. A., Montreal, P. Q., Canada,
Muskegon Typothetae, Muskegon, Mich.,
Ben Franklin Typothetae of Muskogee, Muskogee, Okla.,
Typothetae of Newark, Newark, N. J.,
New Haven Typothetae, New Haven, Conn.,
New Orleans Typothetae, New Orleans, La.,
New Westminster Typothetae, New Westminster, B. C., Canada,
New York Employing Printers' Association, New York, N. Y.,
Tidewater Typothetae, Norfolk, Va.,
Graphic Arts Association, Oklahoma City, Okla.,
Ottawa Typothetae, Ottawa, Ontario, Canada,
Pensacola Club, Pensacola, Fla.,
Typothetae of Philadelphia, Philadelphia, Pa.,
Typothetae of Western Pennsylvania, Pittsburgh, Pa.,
Maine Typothetae, Portland, Me.,

Portland Typothetae, Portland, Oreg.,
Typothetae of Rhode Island, Providence, R. I.,
Quebec Typothetae, Quebec, P. Q., Canada,
Gem City Typothetae, Quincy, Ill.,
Racine-Kenosha Typothetae, Racine, Wis.,
Central North Carolina Typothetae, Raleigh, N. C.,
Richmond Typothetae, Richmond, Va.,
Rochester Typothetae, Rochester, N. Y.,
Rockford Typothetae, Rockford, Ill.,
Tri-City Manufacturing Printers' Association, Rock Island, Ill.,
Saginaw Typothetae, Saginaw, Mich.,
Employing Printers' Educational Association, San Antonio, Tex.,
Typothetae of Savannah, Savannah, Ga.,
Ben Franklin Club of St. Louis, St. Louis, Mo.,
St. Paul Typothetae, St. Paul, Minn.,
Anthracite Typothetae, Scranton, Pa.,
Seattle Division, U. T. A., Seattle, Wash.,
St. Joseph Valley Typothetae, South Bend, Ind.,
Spokane Typothetae, Spokane, Wash.,
Springfield Typothetae, Springfield, Mass.,
Springfield Typothetae, Springfield, Ohio,
Okanagan Press Guild, Summerland, B. C., Canada,
Syracuse Typothetae, Syracuse, N. Y.,
Tacoma Typothetae, Tacoma, Wash.,
Florida West Coast Typothetae, Tampa, Fla.,
Terre Haute Typothetae, Terre Haute, Ind.,
Toledo Typothetae, Toledo, Ohio,
Topeka Typothetae, Topeka, Kans.,
Toronto Typothetae, Toronto, Ontario, Canada,
Trenton Typothetae, Trenton, N. J.,
Typothetae of Tulsa, Tulsa, Okla.,
Typothetae of Utica, and Vicinity, Utica, N. Y.,
Vancouver Typothetae, Vancouver, British Columbia, Canada,
Waco Typothetae, Waco, Tex.,
Typothetae of Washington, D. C., Washington, District of Columbia,
Ben Franklin Typothetae of Wichita, Wichita, Kans.,
Williamsport Typothetae, Williamsport, Pa.,
Wilmington Typothetae, Wilmington, Del.,
Ben Franklin Typothetae, Wilmington, N. C.,
Triangle Typothetae, Winston-Salem, N. C.,

Winnipeg Typothetae, Winnepeg, Manitoba, Canada,
Worcester Typothetae, Worcester, Mass.,

cease and desist, directly or indirectly,

1. From conducting its system of education in principles and methods of cost accounting in such way as to suggest any uniform percentage to be included in selling price as profit or otherwise by members or others using such system of cost accounting.

2. From requiring or receiving from members and others using respondent's uniform cost accounting system, identified and itemized statements of production costs for the purpose of calculating average, normal or standard costs of production and from publishing them to members and the trade generally as a "Standard Price List" or "Standard Guide" or association cost or price list under any other name.

3. From compiling and publishing for use by members and others in the same trade, average, normal or standard production costs with instructions or suggestions for the translation of such standard costs into selling prices under the name of "Standard Price List" or "Standard Guide" or any other name.

It is further ordered, that the respondents shall within sixty (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 forth.

36727°—25—VOL 6——26

FEDERAL TRADE COMMISSION
v.
EDWARD FROHLICH, TRADING UNDER THE NAME AND STYLE OF FROHLICH GLASS CO., AND E. A. BENEDICT.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 975—September 7, 1923.

SYLLABUS

Where an individual engaged in the manufacture and sale of paints, and a dealer agent of said individual, sold to retailers dealing in so-called Army and Navy (government surplus) goods and other merchandise, paints in containers labeled "U. S. Quality Paint," without the name of the manufacturer, and so advertised the same, although such paint was neither used by nor made for the government nor in accordance with any government specifications, requirements, or formula; with a tendency and capacity to mislead the purchasing public into believing said paint to be a high grade paint made for the Government and in accordance and complying with its specifications and requirements, and with the effect of enabling its retail dealer customers so to advertise and sell the same:

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

COMPLAINT.

Acting in the public interest 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 charges that Edward Frohlich, trading under the name and style of Frohlich Glass Company, and E. A. Benedict, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Edward Frohlich carries on his business in Detroit, Michigan, under the name and style of Frohlich Glass Company and is engaged in the manufacture and sale of paints, oils and similar products to the trade and consuming public, and causes a substantial portion of such products to be transported from the State of Michigan to purchasers thereof in other states and territories of the United States; and is in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. Respondent E. A. Benedict, residing at Cleveland, Ohio, is engaged in the business of selling paints, oils, and similar products on commission for various manufacturers, including the respondent Frohlich, and causes said products to be delivered to retail dealers and consumers purchasing the same and residing in states other than the state in which the same are manufactured, and is in direct active competition with other individuals, partnerships and corporations similarly engaged.

PAR. 3. In the course of his said business respondent Benedict originated and devised various misleading and deceptive labels and furnished the same to respondent Frohlich and said respondent Frohlich at said Benedict's request placed said labels upon the containers of house paint manufactured by said Frohlich and delivered the same to customers secured by said Benedict. Among such misleading and deceptive labels was one bearing the words "U. S. Quality" paint and omitting the name of the manufacturer. House paint so labeled was sold and delivered in large quantities by said respondents, acting in concert, both to consumers and to retail dealers in various states, including many dealers engaged or purported to be engaged in selling Government surplus goods, and to concerns doing business under the names "Army Stores", "Army and Navy Stores", "United Surplus Stores" and similar designations.

PAR. 4. In the course of their said businesses said respondents Frohlich and Benedict, cooperating together in the sale of said paint, have falsely represented, advertised, and labeled the same as being "U. S. Quality" paint, and have furnished said retail dealers with cuts and forms for advertising said paint as "U. S. Quality" paint, and many of said dealers have thereby been enabled to and have advertised and sold said paint to the consuming public as "U. S. Quality" paint and have represented the same, in some instances, to have been manufactured for or used by the United States Government; and in other instances said respondent Benedict, with the knowledge of respondent Frohlich, has represented to such dealers that said paint was in fact surplus Government paint; whereas, in fact, said paint was a low grade product and had not been made for nor used by the United States Government and was not Government surplus paint and had not been made according to any Government specifications or requirements.

PAR. 5. The words "U. S. Quality" as used by said respondents in the sale of said paint and on the labels attached to the containers thereof, and in the cuts and forms of advertising furnished by them to said retail dealers as described in paragraph 4 hereof, signify to and are understood by a substantial part of the purchasing public to mean a high grade paint manufactured for or used by the United States Government and prepared according to specifications or requirements of said Government and of the quality required by such specifications and requirements, and said labels and advertisements used by respondents, and the representations made by respondent Benedict to said retail dealers as aforesaid are false and have the capacity and tendency to mislead and deceive the purchasing public into the belief that the said paint made and sold by respondents is a high grade paint manufactured for and used by the United States Government, and to induce them to purchase the same in that belief.

PAR. 6. The above alleged acts and things done by the respondents and each of them as aforesaid are all to the prejudice of the public and of respondents' 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.

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 Edward Frohlich, doing business under the name and style ot Frohlich Glass Company, and E. A. Benedict, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said Act.

The respondents entered their appearance and filed their answer herein. Respondent Frohlich, by his attorney of record, S. Homer Ferguson, and respondent Benedict, in person, entered into a stipulation as to the facts with the attorney for the Commission, which stipulation, as executed and filed, provided, among other things, that, subject to the approval of the Commission, the statement of facts therein contained might be taken as the facts of this proceeding and in lieu of testimony before the Commission, and that the Commission might proceed further upon said stipulation and said statement of facts to make its report, state its findings as to the facts and conclusion, and to enter its order disposing of the proceeding, and the Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. At the time of and immediately prior to the issuing of the complaint herein, respondent Edward Frohlich was and now is carrying on his business in the City of Detroit, State of Michigan, under the name and style of Frohlich Glass Company, and engaged in the manufacture and sale of paints, oils and similar products to the trade, and causing a substantial portion of said products to be transported from the State of Michigan to purchasers in other States and Territories of the United States, and is in direct competition with other individuals, partnerships and corporations similarly engaged.

PAR. 2. At the time of and immediately prior to the issuing of said complaint, respondent E. A. Benedict was residing in Cleveland, Ohio, and was engaged in the business of selling paints, oils and similar products on commission for the respondent Edward Frohlich, and causing said products to be delivered to retail dealers purchasing the same and doing business in States other than those in which the same were manufactured, and in direct competition with other individuals, partnerships and corporations similarly engaged.

PAR. 3. About the year 1913 respondent Benedict devised a certain label for use on containers for paint and used the same for a period of time. The use of this label was then discontinued for a period of four or five years and its use again resumed about the year 1920. In the course of his said business for and with the respondent Frohlich, as in paragraph 2 set out, respondent Benedict suggested to respondent Frohlich, and respondent Frohlich, pursuant to such suggestion and at the request of Benedict, placed said label upon house paint manufactured by Frohlich and paint bearing said label was delivered to said customers by Benedict. House paint so labeled was sold and delivered in quantities by respondents, acting in concert, to retail dealers in various States dealing in so-called Army and Navy goods but carrying also stocks of other merchandise. The label herein referred to bore the words "U. S. Quality Paint" and did not bear the name of the manufacturer.

PAR. 4. At the time respondents were selling the paints so labeled there was, and now is, a large number of stores and dealers throughout the country engaged in the sale of so-called Army and Navy goods, that is, goods manufactured for the use of the United States Government or according to United States specifications and requirements.

PAR. 5. Said paint was manufactured by respondent Frohlich Glass Company according to its own formula and had never been manufactured for the United States Government nor according to any formula or specification or requirement of the United States Government, and had never been used by the United States Government.

PAR. 6. By reason of the use of such label, and by reason of the fact of the advertisement for sale generally of Government surplus goods by Army and Navy stores throughout the country, the customers of respondents were thereby enabled to advertise and sell said paint to the consuming public as paint manufactured for the United States Government or according to its specifications and requirements and such label had, and has, the capacity and tendency to mislead the purchasing public into the belief that said paint was a high grade paint manufactured for the use of the United States Government and prepared according to the specifications and requirements of the Government and of the quality required by such specifications and requirements.

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 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 answer and stipulation and agreed statement of facts 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 the respondents, Edward Frohlich and E. A. Benedict, their agents, representatives, servants and employees, do cease and desist from directly or indirectly:

(1) Using a label, mark or brand containing the words "U. S. Quality Paint" upon paint manufactured or sold by them or either of them, or any similar label, mark or brand that would tend to induce the belief that said paint was manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government, unless the paint in the containers upon which said label is used, is or was manufac-

tured for use by the United States Government or prepared according to the specifications or requirements of the United States Government.

(2) Selling or offering for sale in commerce paint, the containers of which bear the label, mark or brand "U. S. Quality Paint," or any similar label, mark or brand that would tend to induce the belief that the paint therein contained was manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government, unless the paint in the containers so labeled was, and is, in fact manufactured for use by the United States Government or prepared according to specifications or requirements of the United States Government.

It is further ordered, That said respondents shall within thirty (30) days from the date of the service of this order file with the Commission a report setting forth in deatil the manner and form in which they have complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

UTAH-IDAHO SUGAR COMPANY, THE AMALGAMATED SUGAR COMPANY, E. R. WOOLEY, A. P. COOPER AND E. F. CULLEN.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 303—October 3, 1923.

SYLLABUS.

Where two corporations engaged in the purchase of sugar beets and in the manufacture and sale of beet sugar therefrom, which (1) were the result of various consolidations and acquisitions of theretofore competing enterprises, (2) were in close and immediate relationship through common stockholders, directors and officers, and (3) enjoyed a practical if not complete monopoly of the beet sugar industry in the States of Utah, Idaho, Oregon, Washington and Nevada; and certain individuals; in the accomplishment of a conspiracy entered into for the purpose of maintaining said monopoly and preventing and suppressing competition in said territory, jointly and severally

(*a*) Established a territorial division of beet producing territory in each of which divisions one or the other of said corporations, as the case might be, should have the sole right to operate;

(*b*) Disparaged and misrepresented competitive enterprises by asserting to farmers available for, or under, contracts to grow beets therefor, to stockholders and to stock subscribers therein, to supporters thereof and to persons interested therein, and to prospective investors, that the particular enterprise, as the case might be, was financially unsound, would not succeed, was unethically invading the corporation's territory, would not be able to secure machinery, building materials, seed, or sugar beets from nearby land due to the character thereof; by attacking the kind of equipment used; by spreading through undisclosed representatives false and misleading stories concerning the solvency, management and prospects of such enterprises among creditors, stockholders, prospective investors and employees, in an effort to throw the same into the hands of a receiver; and by numerous other false, misleading and unfair statements concerning the same; made at local meetings promoted for such purpose, in advertisements in a large number of newspapers, and otherwise;

(*c*) Disparaged and misrepresented the character, standing, etc. of individuals responsible for the promotion and/or management and operation of competitive enterprises;

(*d*) Intimidated or sought to intimidate a bank through indirect threats of reprisal if it did not cease supporting a competing enterprise; and those interested in such enterprises through threats to build near-by and the purchase of adjoining sites and the breaking of ground as an apparent preliminary to the building of a factory, but without the intention so to do, and through threats to force up the price of sugar beets, to "make it so hot" the promoters would wish they had never started the undertaking, to go to any length necessary to ruin the enterprise, etc.;

(*e*) Instituted vexatious and groundless suits by secret representatives against competitors, and secretly employed persons to acquire stock therein in order to bring a stockholders' action to secure the appointment of a receiver;

(*f*) Acquired the properties or businesses of competing enterprises, or stock control thereof, through the use of secret representatives and by means of false statements, for the purpose of eliminating such enterprises as competitors and removing individual competitors from the field as officers of or dominating spirits in, such enterprises;

(*g*) Betrayed and eliminated a prospective competitive enterprise through an undisclosed representative who took part in the organization and financing thereof, withheld promised support when said enterprise was on the point of successful consummation, and forced the sale of its assets to one of said corporations;

(*h*) Cut off, or sought to cut off, competitive enterprises from their source of supply by ascertaining where it contemplated securing seed and negotiating secretly with such sources for the purchase thereof, thereby making it impossible for said enterprise to secure the same;

(*i*) Induced breach of contract by farmers under agreement to supply competing enterprises with sugar beets, through the loan of money on long time mortgages at 6%, and otherwise, and sought to induce breach of such contracts;

(*j*) Obstructed, harassed and forestalled competitors through using their influence to prevent concerns whom they patronized, from entering into contracts with said competitors to put up and equip factories, and to bring about the abrogation of preliminary agreements of such a character already entered into; through undertaking to induce the Priority Committee of the Government during the War, by means of a pretended disinterested letter and false and misleading statements to refuse permits for the shipment of building materials and machinery necessary for the construction of a competing enterprise's factory; and through acquisition of stock or properties; and

(*k*) Subsidized, or sought to subsidize weekly and daily newspapers circulating in the various States in the Rocky Mountain country where competing enterprises were operating, through the purchase of advertising space in said papers together with a notice to the papers that in extending its advertising activities as contemplated, it would select mediums found friendly and loyal to its organization; and banks through the making of large deposits therein for the purpose of securing their assistance in obstructing the financing of competing enterprises;

With the result that competition in the purchase of sugar beets and in the manufacture and sale of beet sugar in the States of Utah, Idaho, Oregon, Washington and Nevada was obstructed, hindered, and eliminated:

Held, That such practices, substantially as described, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Utah-Idaho Sugar Company, The Amalgamated Sugar Company, E. R. Wooley, A. P. Cooper, and E. F. Cullen, all hereinafter referred to as respondents, have been and are using 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Utah-Idaho Sugar Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, having its principal office and place of business located at the City of Salt Lake in the State of Utah. That said respondent owns and operates factories for the manufacture and refining of sugar, located respectively at Lehi, Garland, Elsinore, Payson, Spanish Fork, and West Jordan, Utah, and Idaho Falls, Sugar City, Blackfoot and Shelly, Idaho, and Toppenish, Washington, with factories at North Yakima and Sunnyside, Washington, in the course of construction. That the respondent, The Amalgamated Sugar Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, having its principal office and place of business located at the City of Ogden, in the State of Utah. That said respondent owns and operates factories for the manufacture and refining of sugar, located respectively at Ogden, Brigham, Smithfield and Lewiston, Utah, and Burley, Paul and Twin Falls, Idaho. That the respondents, E. R. Wooley, A. P. Cooper and E. F. Cullen, are all residents of the State of Utah, residing in the City of Salt Lake.

PAR. 2. That the respondents, Utah-Idaho Sugar Company and The Amalgamated Sugar Company, are now and for more than one year last past have been engaged in the purchase in interstate commerce of sugar beets from growers or purchasers thereof, transporting such sugar beets to refineries and factories owned and operated by said respondents and there manufacturing the same into refined beet sugar and selling and shipping such manufactured refined beet sugar to purchasers located in States and Territories of the United States other than the States in which such refined beet sugar is manufactured in direct competition with other persons, corporations, copartnerships and firms similarly engaged.

PAR. 3. That all of the above-named respondents, each with the knowledge of the other, and with the effect of stifling and suppressing competition in the purchase in interstate commerce of sugar beets and in the manufacture and sale of refined beet sugar in interstate commerce, are now and for more than one year last past, have by combination and conspiracy among themselves entered into and engaged in the unfair practices hereinafter alleged.

PAR. 4. That the aforesaid combination and conspiracy, in furtherance of and to effectuate the object of unfairly hampering and obstructing competitors in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar and of preventing and forestalling competitors from engaging in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar, has been effected and carried out by various means and methods, among them the following, to wit:

(*a*) The circulation of false, misleading and unfair reports and statements concerning the financial standing and responsibility of competitors and prospective competitors, and the method and manner of transacting their said business.

(*b*) The circulation of false, misleading and unfair reports and statements that competitors and prospective competitors would be unable to obtain or secure sugar beet seed; that said competitors and prospective competitors would be unable to secure an adequate supply of sugar beets to supply their factories, and that competitors and prospective competitors would be unable to pay producers or growers for sugar beets purchased.

(*c*) The circulation of false, misleading and unfair reports and statements that respondents occupy all of the producing territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar; that respondents have contracts for the purchase of all beets to be grown; that growers in the vicinity of the factories operated by respondents fail to produce enough beets to supply respondents' factories and that the territory is unfit for the production of sugar beets.

(*d*) Canvassing the territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar, procuring and making future long-term contracts with growers or producers for the purchase of sugar beets and advancing and lending money to said growers and producers on such contracts.

(*e*) By using the great wealth, power and financial influence at their command to cause railroads to delay building tracks and spurs to serve competitors and prospective competitors and to cause banks and others to refuse credit to and to discourage prospective competitors of respondents who were promoting corporations which were intending to operate beet sugar factories and to engage in the manufacture and sale of refined beet sugar.

(*f*) Unfairly and surreptitiously obtaining information concerning the private affairs and business of competitors and prospective competitors and using the information so obtained in buying out competitors and prospective competitors and attempting to destroy competitors and prospective competitors by circulating reports tending to provoke litigation and to incite financial trouble and embarrassment.

(*g*) By using the great wealth, power and influence at their command to erect and put into operation beet sugar factories in the territory where prospective competitors had undertaken to start in competition in the beet sugar business and to contract for the purchase of all available sugar beets upon learning that prospective competitors had undertaken to start in competition in the beet sugar business.

(*h*) Preventing or hindering and attempting to prevent and hinder Dyer & Company, of Cleveland, Ohio, the most prominent manufacturer of beat sugar factory machinery and builder of beat sugar factories in the United States, from building and equipping beet sugar factories for competitors and prospective competitors.

(*i*) The circulation of false, misleading and unfair reports and statements that beet sugar factories of prospective competitors who were intending to erect and operate beet sugar factories, would not be built and that the beet sugar factory machinery of prospective competitors would not make beet sugar.

(*j*) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of inciting financial trouble and embarrassment to competitors and prospective competitors and by annoying and harassing competitors and prospective competitors by instituting vexatious and unjustified litigation.

(*k*) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of purchasing or acquiring the controlling interest of prospective competitors who were erecting beet sugar factories and intending to engage in the manufacture and sale of refined beet sugar.

(*l*) By divers other means and methods, all in furtherance of and to effectuate the object of the destruction of competition of beet sugar factories and of preventing and forestalling competitors from engaging in interstate commerce in the manufacture and sale of refined beet sugar.

PAR. 5. That each of the respondents is now and for more than one year last past, with the effect of stifling and suppressing competitio[illegible] in the purchase in interstate commerce of sugar beets and in the manufacture and sale of refined beet sugar in interstate commerce, has been unfairly hampering and obstructing competitors in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar and preventing and forestalling competitors and prospective competitors from engaging in the purchase in interstate commerce of sugar beets and in the manufacture and sale in interstate commerce of refined beet sugar by various means and methods, among them the following, to wit:

(*a*) The circulation of false, misleading and unfair reports and statements concerning the financial standing and responsibility of competitors and prospective competitors, and the method and manner of transacting their said business.

(*b*) The circulation of false, misleading and unfair reports and statements that competitors and prospective competitors would be unable to obtain or secure sugar beet seed; that said competitors and prospective competitors would be unable to secure an adequate supply of sugar beets to supply their factories, and that competitors and prospective competitors would be unable to pay producers or growers for sugar beets purchased.

(*c*) The circulation of false, misleading and unfair reports and statements that respondents occupy all of the producing territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar; that respondents have contracts for the purchase of all beets to be grown; that growers in the vicinity of the factories operated by respondents fail to produce enough beets to supply respondents' factories and that the territory is unfit for the production of sugar beets.

(*d*) Canvassing the territory in which prospective competitors were intending to erect and operate beet sugar factories and engage in the manufacture and sale of refined beet sugar, procuring and making future long-term contracts with growers or producers for the purchase of sugar beets and advancing and lending money to said growers and producers on such contracts.

(*e*) By using the great wealth, power and financial influence at their command to cause railroads to delay building tracks and spurs to serve competitors and prospective competitors and to cause banks and others to refuse credit to and to discourage prospective competitors of respondents who were promoting corporations which were intending to operate beet sugar factories and to engage in the manufacture and sale of refined beet sugar.

(*f*) Unfairly and surreptitiously obtaining information concerning the private affairs and business of competitors and prospective competitors and using the information so obtained in buying out competitors and prospective competitors and attempting to destroy competitors and prospective competitors by circulating reports tending to provoke litigation and to incite financial trouble and embarrassment.

(*g*) By using the great wealth, power and influence at their command to erect and put into operation beet sugar factories in the territory where prospective competitors had undertaken to start in competition in the beet sugar business and to contract for the purchase of all available sugar beets upon learning that prospective competitors had undertaken to start in competition in the beet sugar business.

(*h*) Preventing or hindering and attempting to prevent and hinder Dyer & Company, of Cleveland, Ohio, the most prominent manufacturer of beet sugar factory machinery and builder of beet sugar factories in the United States, from building and equipping beet sugar factories for competitors and prospective competitors.

(*i*) The circulation of false, misleading and unfair reports and statements that beet sugar factories of prospective competitors who were intending to erect and operate beet sugar factories would not be built and that the beet sugar factory machinery of prospective competitors would not make beet sugar.

(*j*) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of inciting financial trouble and embarrassment to competitors and prospective competitors and by annoying and harrassing competitors and prospective competitors by instituting vexatious and unjustified litigation.

(*k*) By financing and furnishing money to secret and undisclosed agents or employees or servants for the purpose of purchasing or acquiring the controlling interest of prospective competitors who were erecting beet sugar factories and intending to engage in the manufacture and sale of refined beet sugar.

(*l*) By divers other means and methods, all in furtherance of and to effectuate the object of the destruction of competition of beet sugar factories and of preventing and forestalling competitors from engaging in interstate commerce in the manufacture and sale of refined beet sugar.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, upon the respondents, Utah-Idaho Sugar Company, The Amalgamated Sugar Company, E. R. Wooley and A. P. Cooper, the respondent E. F. Cullen not being served, wherein it is alleged that it had reason to believe that said respondents have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of the Act of Congress approved September 26, 1924, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in this respect, and the respondents having entered their appearance by their respective attorneys, and having filed their answers admitting certain of the allegations of said complaint and denying certain others thereof, and the Commission having introduced testimony and evidence in support of the charges in said complaint, and the respondents having introduced testimony and evidence in opposition thereto, and counsel for the Commission, Utah-Idaho Sugar Company, The Amalgamated Sugar Company and E. R. Wooley, having filed briefs as to the law and facts in said proceeding, and the Commission having heard the argument of the respective counsel on the merits of the case, except that The Amalgamated Sugar Company and E. R. Wooley through their counsel rested their case on their brief, and having duly considered the record and being fully advised in the premises, now makes this its report in writing, stating its findings as to the facts and conclusions as follows:

FINDINGS AS TO THE FACTS.

Respondent, Utah-Idaho Sugar Company, is a corporation organized under the laws of the State of Utah in the year 1907, with its principal place of business in the City of Salt Lake in said State. It was organized for the purpose of consolidating, and did consolidate, into a single corporation a number of theretofore separate competing corporations all engaged in the purchase of sugar beets and the manufacture and sale of beet sugar and other products of the sugar beet in various States of the United States. The companies thus consolidated and merged into said Utah-Idaho Sugar Company, were as follows:

(1) The Utah Sugar Company incorporated in the year 1890, with its principal place of business and a factory for the manufacture of beet sugar at the City of Lehi, Utah, with a beet slicing capacity of about 1,000 tons per day. (A ton of beets will

make anywhere from 150 to 275 pounds of sugar, dependent upon soil and seasonal conditions).

(2) The Idaho Sugar Company incorporated in the year 1903, with its principal place of business and a factory for the manufacture of beet sugar at the City of Idaho Falls in the State of Idaho, with a beet slicing capacity of 900 tons per day. In the year 1905 this company acquired the Fremont Sugar Company, which had its principal place of business and a factory for the manufacture of beet sugar at the town of Sugar City in the State of Idaho with a beet slicing capacity of 900 tons per day.

(3) The Western Idaho Sugar Company incorporated in the year 1905, with its principal place of business and a factory for the manufacture of beet sugar at the City of Nampa, State of Idaho, with a beet slicing capacity of 800 tons per day.

After the creation of the Utah-Idaho Sugar Company in the year 1907, as above set out, that company has built or acquired the following additional factories:

(1) A factory at the town of Elsinore, Utah, built in 1911, with a beet slicing capacity of 800 tons per day.

(2) A factory at the town of Payson, Utah, built in 1913, with a beet slicing capacity of 650 tons per day.

(3) A factory at the town of West Jordan, Utah, built in 1916, with a beet slicing capacity of 650 tons per day.

(4) A factory at the town of Yakima, State of Washington, built in 1917, with a beet slicing capacity of 650 tons per day.

(5) A factory at the town of Brigham City, Utah, built in 1916, with a beet slicing capacity of 650 tons per day.

(6) A factory at the town of Toppenish, Washington, built in 1917, with a beet slicing capacity of 750 tons per day.

(7) A factory at the town of Sunnyside, Washington, moved from Grants Pass, Oregon, in 1919, with a beet slicing capacity of 650 tons per day.

(8) A factory at the town of Delta, Utah, built in 1920, with a beet slicing capacity of about 700 tons per day.

(9) A factory at Spanish Fork, Utah, removed thither from Nampa, Idaho, in 1916. The beet slicing capacity of the factory is 800 tons per day.

Respondent, The Amalgamated Sugar Company, is a corporation organized in the year 1902, under the laws of the State of Utah, with its principal place of business in the City of Ogden, in said State. It was organized for the purpose of consolidating, and did consolidate, into a single corporation two separate competing corporations engaged in the purchase of sugar beets and the manufacture of and sale of beet sugar and other products of the sugar beet in various States of the United States. The companies thus consolidated with and merged into the Amalgamated Sugar Company were as follows:

(1) The Ogden Sugar Company, incorporated in the year 1898, with its principal place of business and a factory for the manufacture of beet sugar in the City of Ogden, Utah, with a beet slicing capacity of 900 tons per day.

(2) The Logan Sugar Company, incorporated in the year 1901, with its principal place of business and a factory for the manufacture of beet sugar in the town of Logan, Utah, with a beet slicing capacity of 650 tons per day.

(3) This respondent in the year 1912 erected a further factory near the town of Burley, Idaho, with a beet slicing capacity of 600 tons per day.

By reincorporation under the name "The Amalgamated Sugar Company" in the year 1915, this respondent absorbed and consolidated with the two companies above mentioned:

(4) Lewiston Sugar Company, a corporation organized in 1903, with its principal place of business and a factory in the town of Lewiston, Utah. At the time of such consolidation the beet slicing capacity of its said factory was 800 tons per day.

Since said reörganization, this respondent has erected or acquired the following additional beet sugar factories:

(5) A factory located near the town of Twin Falls, Idaho, erected in 1916, with a beet slicing capacity of about 800 tons per day.

(6) A factory at Paul, in the State of Idaho, erected in the year 1917, with a beet slicing capacity of about 650 tons per day.

(7) A factory located near the town of Smithfield, Utah, erected in 1916, with a beet slicing capacity of about 800 tons per day.

The factories of the corporate respondents, the dates of their acquisition and their geographic location are more fully described in the attached map,[1] which is used for the purpose of illustration only, and is made a part of the findings, but is not an exhibit in the proceeding.

From the time of their acquisition or erection, said respondents have continuously operated and still operate the foregoing factories in the manufacture of beet sugar and other products, such as sugar molasses, derived from the sugar beet in competition with other individuals, partnerships and corporations similarly engaged, and have continuously sold said commodities to purchasers in various States of the United States. (The molasses is shipped to points where said

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[1] Not published.

corporations maintain special equipment in connection with a few of their factories, for the purpose of manufacturing said molasses into refined beet sugar). Refined beet sugar is the product principally so sold and references to said product will hereinafter be limited thereto. Respondents ship said beet sugar, when so sold from their said several manufacturing factories to said purchasers at points in States other than the State of said manufacture, in competition with other individuals, partnerships and corporations similarly engaged in the production and/or sale of beet and cane sugar in interstate commerce.

The sugar beets from which respondents manufacture the aforesaid product are secured from farmers so far as possible in territory adjacent, in each instance, to aforesaid factories. From time to time, however, and as considerations of convenience and other circumstances render the same desirable or necessary, respondents purchase and ship sugar beets from territory not so contiguous, and in many instances, in a State or States other than that in which is located the factory at which said beets are to be converted into sugar. In such instances they ship the sugar beets thus secured from points in the State where purchased to such factory located in such other State.

For many years it has been the practice of these respondents annually, in advance of the growing season to send agents, by them denominated field men and agricultural superintendents, among the farmers in the States of Utah, Idaho, Oregon, Nevada and Washington, for the purpose of entering with said farmers into contracts whereby the farmers undertake to grow sugar beets for said respondents under their supervision, in consideration of certain prices to be paid by respondents partly before and partly after the same are manufactured into sugar. With few exceptions, all the sugar beets procured by said respondents for conversion in their factories, as heretofore set out, have been and are purchased in the performance of said contracts. For many years, and as a regularly recurring annual practice, said respondents have secured, and still secure, many thousands of tons of sugar beets in the manner above set out, which beets have been and are, converted into sugar at said factories, and said product regularly has been, and is, in the ordinary course of business, shipped and sold by said respondents in interstate commerce. There has thus existed for many years, and still exists, a regular flow or current of interstate commerce in sugar beets and beet sugar, beginning with the contracts for and production of said sugar beets, which are sent from the States, in many instances, where the same are produced, with the expectation that they will end their transit in the form of beet sugar after the purchase of that commodity in other States, which current of commerce includes all cases where purchases of beets are made by respondents for shipment to another

State or for conversion within the State where purchased and the shipment outside of the State of the beet sugar resulting from such conversion.

There has been since the formation of the companies afterward merged into the Utah-Idaho and The Amalgamated Companies, as hereinbefore set out, (hereinafter referred to as predecessor companies) and continuously has been, a close and intimate relation between the prominent stockholders, directors and officers of the predecessor and of the consolidated companies. Joseph F. Smith was President of the Utah Sugar Company, the Idaho Sugar Company, the Fremont Sugar Company, and the Western Idaho Sugar Company, while Horace G. Whitney was at the same time Secretary of each of said companies. Upon the organization of the respondent, Utah-Idaho Sugar Company, Joseph F. Smith became President and Horace G. Whitney became Secretary-Treasurer of that company. Joseph F. Smith likewise became President of respondent, The Amalgamated Company, upon its incorporation in 1902, and continued in that capacity until the year 1915 when he was succeeded by Anton Lund, a heavy stockholder in both the Utah-Idaho and the Amalgamated Companies. Thomas R. Cutler was General Manager of the predecessor companies later merged into the Utah-Idaho Company, was for some time thereafter General Manager of that company, and was a Director of The Amalgamated Company at the time of its organization in 1902. William H. Wattis in 1914 was President of respondent, The Amalgamated Company, and was a member of its Board of Directors in 1915, 1916 and 1917. In the last named year he became a Director of the Utah-Idaho Sugar Company and was placed upon its Executive Committee. In 1919 he was a prominent stockholder in The Amalgamated Company and in 1920 a heavy stockholder in the Utah-Idaho Company. Of the last named company, he became General Manager in 1921, and had been connected with that company in one capacity or another for a great many years. Charles W. Nibley was connected officially with The Amalgamated Sugar Company from the time of its original incorporation until the absorption of the Lewiston Company in 1916. In 1915 he was a Director of the Utah-Idaho Company and in 1917 became its General Manager. L. R. Eccles was Vice President of the Lewiston Company at the time of its consolidation with The Amalgamated Company in 1915, and in that and the following year was a Director of the Utah-Idaho Company, in which capacity he was succeeded by his brother D. C. Eccles in 1917. L. R. Eccles was also Vice President, General Manager and a Director of The Amalgamated Company from 1915 to September of 1918. D. C. Eccles was a Director of the Utah-

Idaho Company in 1916 and 1917, and a Director of The Amalgamated Company in 1915 and 1916. Joseph Geohegan was a Director of the Utah-Idaho Company at the time of its organization and his company, the Geohegan Brokerage Company, was joint sales agent for The Amalgamated and the Utah-Idaho Companies up to the year 1916, when he died. Besides these more prominent and influential persons, there were a number of others who from time to time were stockholders, directors, administrative or other officials and employees of both The Amalgamated and the Utah-Idaho Companies, being frequently attached in some capacity to both these respondents at the same time.

At an early period a mutual understanding and intention was manifested between respondents, Utah-Idaho and Amalgamated Companies (hereinafter referred to as corporate respondents), to absorb and retain for themselves the gradually expanding beet sugar industry beginning in the State of Utah and spreading thence to the States of Idaho, Washington, Oregon, Nevada and Montana.

H. O. Havemeyer, President of the American Sugar Refining Company, was a large stockholder in corporate respondents. He became identified with their interests sometime prior to the year 1902 and was active in giving assistance and advice in the matter of absorbing and retaining said industry and of keeping independent enterprises [2] out of the field, as hereinafter referred to. Corporate respondents reported to him the efforts of independent enterprises to invade the field and what efforts were being made to suppress or absorb them and in turn he advised and ordered what steps should be taken in that behalf. He was uniformly offered the opportunity to participate in stock purchases when independent enterprises were acquired or controlled in that manner. At his death his son Horace Havemeyer, as administrator, succeeded him in the management of his interests in corporate respondents and their stock controlled companies.

In the year 1903 the predecessor companies of corporate respondents held a joint meeting of their Boards of Directors, presided over by Joseph F. Smith. The purpose of the meeting was to eliminate an independent beet sugar company which proposed to erect a factory at Lewiston, Utah, for the avowed reason that "the proposed factory would be a menace to the existing companies." The Lewiston Company was afterward absorbed by the respondent The Amalgamated Company, as hereinbefore set out.

In the year 1905 the predecessor companies of respondent Utah-Idaho Company forestalled and prevented one Boutell and one

[2] The words "independent enterprise" are used throughout these findings to designate enterprises other than, and competing with or potential competitors of, the Utah-Idaho and The Amalgamated Sugar Companies.

Hoover from financing and establishing an independent enterprise near Payette in southwestern Idaho or Arcadia, Oregon. This was done through Thomas R. Cutler, Manager of said predecessor companies, by promising to erect a factory near Payette and using influence to persuade the farmers of the vicinity to enter into beet contracts with said predecessor companies. H. O. Havemeyer instructed said Cutler to buy a factory site in the same town Boutell and Hoover might decide to locate and to do the same with regard to any independent enterprise seeking to enter the States wherein said predecessor companies were operating. Said Cutler used certain influence at his command to stop the operations of Messrs Boutell and Hoover, both near Payette and at other points, notably at Boise, Idaho. As a result of aforesaid things done by said predecessor companies, all efforts of said Boutell and Hoover to establish an independent enterprise in the State of Idaho were frustrated and notably at the towns of Payette, Boise and Nampa, and thus the establishment of said independent enterprise at either place and the potential competition thereof with corporate respondents was forestalled and prevented.

By the year 1905 the predecessor companies of the Utah-Idaho Company bought sufficient stock to control the Snake River Valley Company, an independent enterprise then competing with the predecessor companies of corporate respondents, which owned and was operating a beet sugar factory at Black Foot, Idaho. This was the result of efforts in that behalf begun by the predecessor companies of respondent Utah-Idaho Company, through aforesaid Cutler as early as the year 1905, when he began buying up stock in said independent enterprise. He wrote H. O. Havemeyer that he was anxious to obtain control of said independent enterprise for said predecessor companies and that they were determined to get said independent enterprise into their hands. Said independent enterprise was later absorbed by said predecessors as above set out, thereby eliminating the competition which had theretofore existed between said independent enterprise and the predecessor companies of corporate respondents.

The Layton Sugar Company was incorporated in the year 1915 for the purpose of erecting a beet sugar factory at the town of Layton, Utah, and engaging in the business of purchasing sugar beets and of manufacturing and selling beet sugar in interstate commerce. Upon its organization and by agreement such corporate respondent invested $100,000.00 in the stock of said company, and these holdings together with the holdings of others closely identified in other interests with corporate respondents, put into the hands of the said respondents the control of the operation of the Layton

Sugar Company with the effect of preventing any competition between that company and corporate respondents.

In the year 1909 the corporate respondents agreed upon an interstate territorial division of beet producing territory in which boundary lines were established defining the territory in which The Amalgamated Company should have the sole right to operate without invasion by the Utah-Idaho Company, and vice versa. This agreement continued to the year 1916 when it was superseded by a similar agreement rearranging such boundary lines and territory.

By the year 1916 corporate respondents together (but not in the sense of joint ownership) owned or controlled all the beet sugar factories in the States of Utah, Idaho, Nevada, Oregon and Washington, including factories built by themselves and the factories of independent enterprises which they had acquired, wholly or partly, through obstructive, coercive and unfair methods as herein set out, and in connection with such building and acquisition had prevented the entry of other proposed independent enterprises into the field by means of similar obstructive and suppressive measures. As a result said respondents were sometime prior and up to the year 1916, enjoying a practical if not an entire monopoly of the beet sugar industry in the States above mentioned.

At this time each respondent was possessed of monies, assets and properties to the value of many millions of dollars. The Utah-Idaho Sugar Company was originally capitalized at $13,000,000, which was increased to $30,000,000 in May, 1917. The properties and assets of the three predecessor companies merged in the Utah-Idaho Company at the time of said merger were of the total value of over $11,000,000. The Amalgamated Sugar Company was capitalized at $25,000,000, which after two increases was finally fixed at $30,000,000. At the time the conspiracy hereinafter set out was entered into, the corporate respondents were enjoying a very large and lucrative business, as is shown by the following table of the combined total sales of beet sugar by said respondents in interstate and intrastate commerce during the years indicated:

Total sales		Interstate distribution	
	100-lb. bags		*100-lb. bags*
1916	2, 644, 949	1916	2, 250, 820
1917	2, 824, 557	1917	2, 342, 586
1918	2, 458, 678	1918	1, 901, 205
1919	2, 565, 870	1919	1, 895, 017

The general management and control of all the aforesaid business and activities of corporate respondents were and are exercised by them from their principle offices in the Cities of Salt Lake and Ogden, Utah, respectively, from which points they control the procuring and handling of sugar beets from field to the factory, the operations of said factories, the diversion of beets from one to the other, the extension and development of the beet growing industry, the location and erection of new factories, and the closing down and removal of factories, from one place to another from time to time, and in divers instances across State lines, all in a manner to consolidate and unify their large operations, and to best prevent or hinder the competition of independent enterprises entering or desiring to enter into said industry in aforesaid States in which respondents operate, and thus to secure and retain to said respondents aforesaid monopoly of the beet sugar industry in said territory.

In about the year 1915, respondents, Utah-Idaho Sugar Company, The Amalgamated Sugar Company, E. R. Wooley, A. P. Cooper, and E. F. Cullen, secretly agreed, conspired and confederated with each other to maintain and retain the aforesaid monopoly of corporate respondents, to prevent the establishment of beet sugar enterprises and the building of sugar factories by persons or interests other than respondents, The Amalgamated Sugar Company and the Utah-Idaho Sugar Company, and to suppress all competition in the manufacture, sale and distribution of beet sugar in the States of Utah, Idaho, Nevada, Oregon and Washington, and in the sale in interstate commerce of refined beet sugar produced in those States. At the time of the issuance of the complaint herein and the filing of their answer to the same, respondents E. R. Wooley and A. P. Cooper were residents of Salt Lake City in the State of Utah. Respondent E. F. Cullen was not served with the complaint, and will not be considered further as a respondent in these proceedings. The acts and things done by the said Cullen, however, in so far as they throw light upon the acts and things done by the other respondents herein, are hereinafter referred to.

Pursuant to, and to effect the objects of aforesaid secret agreement, conspiracy and confederation, and to accomplish the purpose thereof, respondents did the following acts and things:

(*a*) In the fall of 1915 and the spring of 1916, one John A. Hendrickson, a resident of Logan, Utah, promoted with the assistance of others, an independent enterprise with the intention of erecting a beet sugar factory near the town of Smithfield, in said County and State, with the purpose and intention of engaging in the manufacture of beet sugar and the sale of that product in interstate commerce. The town of Smithfield and its vicinity lay in the territory allocated to The Amalgamated Sugar Company under the division of interstate territory betwen the two corporate respondents, heretofore referred to and provided for in a certain contract, being Exhibit

51[8] herein, which is hereby referred to and made a part of this finding. This independent enterprise secured an option upon a factory site and a large number of beet contracts with the farmers in the vicinity of said site, and, further, had the financing of the new enterprise well under way through stock subscriptions secured from farmers and business men in the vicinity of Smithfield and from other persons of financial responsibility in the State of Utah and elsewhere. When the corporate respondents learned that said independent enterprise was thus progressing, they called and held in the vicinity of the proposed independent factory meetings of aforesaid stock subscribers in said enterprise and farmers under contract to grow sugar beets for it. The purpose of said meetings was to discourage and dissuade said financial backers and farmers from further supporting said enterprise. Joseph Scowcroft, Director and Vice President of the respondent, The Amalgamated Company, Merrill Nibley, who became Assistant General Manager of the respondent, Utah-Idaho Company in 1916, Fred Taylor, Secretary and Treasurer of the respondent, The Amalgamated Company, and L. R. Eccles, a Director of the Utah-Idaho Company, attended said meetings and made statements to the effect that the independent enterprise was financially unsound, would not succeed, was unethically invading territory which belonged to The Amalgamated Company and that that company would itself build a factory near Smithfield in the immediate future. Shortly after said meetings held in the spring of 1916, the respondent, The Amalgamated Company purchased a site in close proximity to the site of the independent factory and started breaking ground as an apparent first step toward building a factory, but without the intention to so build, and in fact said factory was not built.

Said Hendrickson entered into a preliminary agreement with the Dyer Company for the erection of the independent factory. The Dyer Company is a corporation organized under the laws of the State of Ohio, with its principal office in the City of Cleveland in said State. It is, and for many years prior to 1916, had been engaged in the manufacture of machinery for the production of beet sugar, and in the building and equipping of beet sugar factories in many portions of the United States, and was the largest of such manufacturers and builders. Up to the time these proceedings were commenced the Dyer Company had built and equipped thirteen factories for respondent, Utah-Idaho Company, and four factories for the respondent, The Amalgamated Company. Upon learning that said agreement had been entered into, Charles W. Nibley, then a Director of respondent, Utah-Idaho Company, telegraphed the Dyer Company

[8] Not published.

at Cleveland, Ohio, protesting against the erection of said independent factory, and as a result of said protest the Dyer Company withdrew from said preliminary agreement.

As a result of the aforesaid things, the financial backers and farmers who had contracted to grow beets for said independent enterprise were discouraged from continuing their support of the same, were induced to break their contracts and withdraw their undertakings of financial support, all of which resulted in the abandonment of said enterprise by said Hendrickson and his associates, and thus the establishment thereof and the potential competition between the same and corporate respondents in and about the purchase of beets and the manufacture and sale of beet sugar in interstate commerce was forestalled and defeated.

(*b*) In December, 1916, the West Cache Sugar Company, an independent enterprise, was incorporated under the laws of the State of Utah by aforesaid Hendrickson, one Lorenzo H. Stohl, and others for the purpose of erecting a beet sugar factory in Cache Valley or West Cache Valley in said State, and to purchase sugar beets and manufacture and sell beet sugar in interstate commerce. Said Hendrickson and Stohl were the promoters of said enterprise and became stockholders in said corporation. Hendrickson further became President, Treasurer and a Director in said Company upon its incorporation. Upon learning that said projected enterprise was under way, with the purpose, intent and object of maintaining their agreement, as referred to in Exhibit 51,[4] to the exclusion of competitors, respondents The Amalgamated Sugar Company and Utah-Idaho Sugar Company, through their various officers and agents, sought to discourage and prevent the establishment of said enterprise by threats uttered to said incorporators to the effect that these respondents would not permit any independent factory to be erected in said Cache Valley; that if the same should be erected, these respondents would force the price of sugar beets up to $7.00 per ton (the prevailing price being then $5.50); that said enterprise was an invasion of Amalgamated territory, and that if the West Cache Sugar Company succeeded in erecting a factory and entering into business, said respondent, The Amalgamated Sugar Company, would "make it so hot" for said company that its promoters would wish that they had never started the undertaking. The West Cache Company succeeded in erecting its factory and engaged in the years 1918 and 1919 in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce in competition with corporate respondents, whereupon respondent, The Amalgamated Sugar Company, financed and furnished funds to respondent Wooley, and through him bought

[4] Not published.

up the stock control of the West Cache Company, and through the power thus secured, procured the discharge of said Hendrickson as an officer of said company, whereby respondents secured complete control of the management of said company and of its factory for the purpose of eliminating, and did eliminate, said company as a competitor. In order to discredit said Hendrickson and Stohl and thus destroy the influence they had and exerted in the management of said independent enterprise as the successful promoters thereof, a vexatious and groundless law suit was instituted by respondent Wooley under the secret and undisclosed instructions of respondent The Amalgamated Company, agianst said Hendrickson and Stohl charging them with fraudulent conversion of funds belonging to the West Cache Sugar Company. Said suit was afterward dismissed on its merits by a contract between said Hendrickson and Stohl on the one part and numerous parties including the respondent The Amalgamated Company on the other part. Pursuant to one of the terms of the said contract, said Hendrickson and Stohl sold and delivered to respondent, The Amalgamated Company, and its associates in said contract, all their stock in the West Cache Sugar Company. Said contract further provided that Hendrickson and Stohl should destroy by burning, certain evidence of unfair and illegal practices used by respondent Wooley and his associates in securing control of said independent. Hendrickson and Stohl carried out said provision by burning said evidence.

(c) The Beet Growers' Sugar Company, an independent enterprise, was incorporated in May, 1917, under the laws of the State of Idaho for the purpose of erecting a beet sugar factory near the town of Rigby, Idaho, and of engaging in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. Shortly after said incorporation and while said factory was in course of construction, respondents Utah-Idaho Company, Wooley, Cooper and Cullen, during the years 1917 and 1918, undertook to prevent the successful operation of said independent, and the erection of its factory by making false, unfair and misleading statements to farmers under contract to supply beets to said independent factory and to farmers with whom such contracts were or would be made, and to stockholders of said independent company to the effect that the company would not be able to get beet seed to supply to contracting farmers nor to get the necessary machinery and building materials to complete said factory; that it would be financially unable to complete its factory; that the land in the vicinity of said factory would not produce sugar beets; that said independent company would not be able to pay for beets under contract; that the promoters of said enterprise were dishonest and that it was a dangerous investment.

At this time respondents Cooper and Cullen were in the employ of said Beet Growers' Sugar Company as Consulting Engineer in charge of construction, and Bookkeeper, respectively. Said Cooper and Cullen sought to embarrass the Beet Growers' Company and to throw it into the hands of a Receiver by going about in the States of Utah and Idaho among its creditors, stockholders and those interested in the success of said enterprise and making false and misleading statements concerning said company to the effect that it was insolvent and that due to mismanagement it would not succeed. Respondents Cooper, Cullen and Wooley further sought to induce prospective investors not to purchase stock in, or otherwise finance the Beet Growers' Company, by making to said prospective purchasers similar false and misleading statements. Said Cooper and Cullen further made false and misleading statements to sundry employees of the Beet Growers' Sugar Company and others interested in its success, which statements were derogatory of the standing and reliability of the officers of said company, and statements to the effect that the financial condition of said company was bad and that said company was going into the hands of a Receiver. Respondent Wooley employed at Salt Lake City, Utah, David A. West and Ezra Ricks as secret and undisclosed agents to acquire stock in the Beet Growers' Company for the purpose of bringing a stockholder's action to secure the appointment of a Receiver for said company in the State of Idaho, which said suit was brought by said Ricks upon the alleged ground of dishonesty and mismanagement of said company's officers. Said charges, made the basis of said suit, were false and said suit was afterwards dismissed. Because of their aforesaid conduct, respondents Cooper and Cullen were discharged by the Beet Growers' Company, and thereafter they visited points in Utah and Idaho, making to stockholders and creditors of said company similar false and misleading statements, all in the attempt to throw said company into the hands of a Receiver and eliminate it as a competitor of corporate respondents.

In the spring of 1917, Merrill Nibley, Assistant General Manager of respondent Utah-Idaho Company, wrote to the Anderson Brothers Bank at Rigby, Idaho, intimating that said bank had been working in the interest of the Beet Growers' Sugar Company, and indirectly threatening the bank with reprisals if it did not cease supporting said independent enterprise and work in harmony with the Utah-Idaho Company.

(*d*) The Oregon-Utah Sugar Company, an independent enterprise, was incorporated in September, 1915, under the laws of the State of Utah, for the purpose of erecting a beet sugar factory at the town of Grants Pass, Oregon, and of engaging in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. Charles W. Nibley, at that time a Director in both the Utah-Idaho and The Amalgamated Companies, assisted in the organization of said independent enterprise and in the financing thereof. As part of said financing said Nibley undertook to procure loans up to the amount of $400,000 to defray operating expenses; the said Nibley from time to time and during the construction of said factory kept the respondent Utah-Idaho Company fully informed as to the progress then being made by the said Oregon-Utah Sugar Company and at no time was it the intention of the said respondent to permit said company to operate and compete with either it or The Amalgamated Sugar Company in the sale and distribution of beet sugar in interstate commerce. When the independent factory was almost completed and its operation an assured success, said Nibley withheld said financial support, and used his influence to force said independent enterprise to sell its said factory, property and other assets to said Utah-Idaho Company, which result was accomplished, thereby eliminating competition between said independent enterprise and the Utah-Idaho Company in the purchase of sugar beets and in the manufacture and sale of beet sugar in interstate commerce.

(*e*) In the years 1915 and 1916, one Colonel Mundy and others were promoting and endeavoring to establish an independent beet sugar enterprise in Southern Oregon, and to that end had obtained options for the purchase of 16,000 acres of land upon which to grow sugar beets. $14,000 had been paid on said options. Mundy began negotiations to purchase an existing factory located at Fallon, Nevada, and belonging to the Nevada-Utah Sugar Company, with the intention of moving and re-erecting said factory upon the site finally chosen for his own enterprise. Upon learning of the progress of said independent enterprise, respondent Utah-Idaho Company sent certain of its agents from Salt Lake City, Utah, into Oregon, and especially the southern part of that State wherein said Mundy and his associates were operating, said agents being sent for the purpose of obtaining, and they did obtain, information as to the source or sources from which said enterprise intended to procure beet seed, which at that time, because of the war conditions, was exceedingly scarce and hard to obtain. Upon securing such information, said respondent secretly, through respondent The Amalgamated Company, negotiated for said seed in such a manner as to make it impossible for said independent enterprise to obtain same. The agents sent into Oregon, as aforesaid, further sought to discourage farmers and other persons interested, from growing beets for said independent enterprise and otherwise contracting with it, by statements to the effect that said independent enterprise had no beet seed and could not get any, and that their principal had bought up all the seed in the country; which statement was at that time untrue. Respondent Utah-Idaho Company through C. W. Nibley acquired 51% of the stock of the Nevada-Utah Sugar Company, which was not operating its factory, in order to prevent, and thus did prevent said Mundy and associates from securing the factory of said Nevada-Utah Company. As a result of aforesaid things done by respondent Utah-Idaho Company, the establishment of said independent enterprise by said Mundy and his associates was forestalled, and the potential competition between the same and corporate respondents in and about the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce was forestalled and prevented.

(*f*) The Montana-Utah Sugar Company, an independent enterprise, was incorporated in July 1916 under the laws of the State of Montana for the purpose of building a beet sugar factory near the town of Hamilton in said State, and to engage in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said independent enterprise negotiated with the Dyer Company for the construction of the factory up to the point where a price therefor had been fixed, when the Dyer Company refused to proceed on the ground that it would interfere with that company's two best customers, meaning corporate respondents. The Montana-Utah Sugar Company then let the contract for the building of its factory to another company, and said factory was about one-fourth completed, involving an expenditure, including payments on machinery of about $350,000. Respondent Utah-Idaho Company about this time began to make and publish through agents and otherwise in Montana and in the district of Hamilton in said State, disparaging, untrue and misleading statements concerning the promoters and others interested in said enterprise, advised investors and prospective investors in said independent enterprise that the purchase of its stock was a bad investment, and otherwise prejudiced the financing of said independent enterprise with the result that subscriptions to its stock were cancelled and other financial support was withheld, as a result whereof said independent enterprise went into the hands of a Receiver. Thereafter, said enterprise was turned over to respondent Wooley upon his undertaking to reorganize and refinance the same, and while in said respondent's hands and control was adjudged a bankrupt. Through the instrumentality of respondent Wooley the assets and other properties of said independent enterprise were sold to the Great Western Sugar Company. Said independent factory was not completed and potential competition between said independent enterprise and the corporate respondents in and about the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce were thus forestalled and prevented.

(*g*) The Gunnison Valley Sugar Company, an independent enterprise, was incorporated in 1917, under the laws of Utah, for the purpose of building a beet sugar factory at the town of Gunnison, in said State, and to engage in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce. The site chosen was within the territory allocated to the Utah-Idaho Company under the agreement whereby that Company and The Amalgamated Company divided territory as hereinbefore set out. On learning of the activities of this independent, respondent Utah-Idaho Company sought to prevent the erection of said independent factory and the success of the Gunnison Valley Company by making, through various agents, false and misleading statements tending to discourage the purchase of stock in said independent, to obstruct the financing thereof and to discourage farmers in the vicinity from growing beets or contracting to grow beets for said independent enterprise. Said false and misleading statements were to the effect that the purchase of stock in said independent enterprise was a bad investment; that the machinery going into its factory was second-hand, corroded, worthless and would never make sugar; that said independent enterprise could not secure sufficient beet seed; that the land contiguous and naturally tributary to the site of said factory would not raise beets. Further, said respondent made attacks upon the character of promoters and other persons prominent in the financing and operation of said independent enterprise. Respondent Utah-Idaho Company further sought to prevent said independent enterprise from procuring supplies of sugar beets by seeking to induce one Royal M. Barney and others to break the contracts into which they had entered for the growing of sugar beets for said independent enterprise, and soliciting said Barney and others to act as its agent in persuading other beet growers to break their similar contracts with said independent enterprise, which at that time was an actual competitor of said respondent in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce.

(*h*) The Springville-Mapleton Sugar Company, an independent enterprise, was incorporated in June, 1917, under the laws of the State of Utah, for the purpose of erecting a beet sugar factory near the towns of Springville and Mapleton, in said State, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said company negotiated with the Dyer Company to build its said factory; whereupon, respondent Utah-Idaho Company endeavored to prevent the Dyer Company from contracting for and erecting said factory through correspondence with the officials of the Dyer Company indirectly requesting that such construction be not undertaken. The effort failed and the Dyer Company contracted with said independent enterprise to build its said factory, and did subsequently build the same. Having failed in this, respondent Utah-Idaho Company endeavored to induce the Priority Committee of the United States Government to refuse permits for the shipment of building materials and machinery into the State of Utah necessary to the construction of the independent factory. The means used to accomplish this purpose were:

1. A letter written by Merrill Nibley, Assistant General Manager of the Utah-Idaho Company, to said Priority Committee, under date of October 1, 1917, in which letter misleading statements were made to the effect that the territory in question was already fully served by existing factories; that said factories had never been able to obtain their full requirements of beets from said district; that the proposed independent factory was not necessary and would not increase the food supply, and that the erection of said factory would draw heavily on the resources and labor of the country.

2. Mark Austin, at that time General Agricultural Superintendent of respondent Utah-Idaho Company, dictated and caused to be written a letter to said Priority Committee, containing similar untrue and misleading statements, and in addition containing some purported facts showing that the Utah-Idaho Company completely served the district in question and served it well, both with regard to the farmers' interests and the amount of sugar produced in said district. Said letter further stated that the farmers in that section considered the establishment of a new factory a serious mistake, and that in justice to the farmers it should not be done. Said letter further purported to be written by a farmer and beet grower of the section, who had the welfare of the farmer and the general industry at heart and was speaking from patriotic and disinterested motives. This letter said Austin caused one J. Wm. Johnson, an employee of the Utah-Idaho Company, to sign, and said letter was forwarded to said Priority Committee as a disinterested statement and expression of opinion of the said Johnson as a citizen of said district, reflecting the opinion of the citizens thereof. Said letter in no wise disclosed its real authorship, or that the purported writer thereof had any connection with, or in any manner spoke for the Utah-Idaho Company.

3. Fred G. Taylor, formerly Secretary of the Lewiston Sugar Company hereinbefore referred to, and Secretary of respondent, The Amalgamated Company, from 1915 to the summer of 1919, at which time he became a Director and the General Manager of said Com-

pany, for a period of about nine months from October 1, 1917, resided in the City of Washington, D. C. During said period said Taylor's personal expenses, amounting to $2,320, were paid and reimbursed to him, one-half each, by the corporate respondents.

In November, 1917, respondent, Utah-Idaho Sugar Company, telegraphed said Taylor in Washington, requesting him to use his efforts to persuade the Priority Committee and other Government officials of the "utter needlessness" of the said independent factory, for the purpose of hampering, hindering and delaying the operations of said independent enterprise and the building of its factory.

By reason of the things done and the tactics employed, as in this subdivision above set out, the operations of said independent enterprise and the building of its factory were hampered, hindered and delayed.

(*i*) The Idaho Cooperative Sugar Company, an independent enterprise, was organized under the laws of the State of Idaho in the year 1919 for the purpose of erecting a beet sugar factory near the town of Filer in said State, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. The site of this proposed independent factory is in territory allocated to the respondent, The Amalgamated Company, in the division of interstate territory between corporate respondents hereinbefore referred to, Exhibit 51. By June, 1920, said independent enterprise had sold $375,000 worth of stock to farmers in the vicinity of Filer and to other persons, had bought land, and its factory and adjacent buildings were partly erected. Upon said enterprise thus showing substantial evidence of success, respondent Utah-Idaho Company, through one or more agents sought to discourage investors in the region of Filer and elsewhere from purchasing stock in said independent enterprise on the ground that such investors would lose money. Respondent, The Amalgamated Company, in the spring of 1920 deposited $10,000 to its general account in a bank at Filer, Idaho, and in the same month made a substantial deposit in a bank in Kimberly, Idaho. Before this time said respondent had maintained no deposits either in these banks or in other banks in the towns of Filer and Kimberly. These deposits were made by respondent for the purpose of securing the cooperation and assistance of said banks in obstructing the financing of said independent enterprise and to prevent the obtaining of credit by it.

(*j*) The Southern Utah Company, an independent enterprise, was incorporated in November, 1915, under the laws of the State of Utah for the purpose of building a beet sugar factory near the town of Delta, Utah, and of engaging in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. Said company had entered into a contract for the erection of its factory and had sold stock in Utah and other places when respondent Utah-Idaho Company, through its agent, James M. Davis, threatened one of the Directors of said independent enterprise, saying in effect that respondent Utah-Idaho Company would not permit the erection of said independent factory and that if the same was erected, said respondent would go to any length necessary to ruin said independent enterprise, and, further, said respondent sent agents about the territory adjacent to said proposed factory to induce, and they did induce, farmers not to contract for growing beets for said independent enterprise and to break contracts already entered into. Among other inducements, this respondent offered to loan, and did loan, to farmers money on long-time mortgages at 6% interest and caused farmers by reason of such loans to break contracts which they had entered into with the Southern Utah Company. One James E. Steel besought Merrill Nibley, Assistant Manager of the Utah-Idaho Sugar Company, respondent, to desist from interfering with the plans of the Southern Utah Company and said Nibley's reply to Steel was "We have got them on the run and will keep them on the run." The attempt to construct a factory by the Southern Utah Company was thus abandoned.

Shortly thereafter the Delta Beet Sugar Corporation, an independent enterprise, was incorporated under the laws of the State of New York, for the purpose of building a beet sugar factory at the town of Delta, Utah, and to engage in the business of purchasing sugar beets and the manufacture and sale of beet sugar in interstate commerce. The factory was built and operated by said Delta Beet Sugar Corporation in its aforesaid business in competition with the corporate respondents, and in September, 1918, the respondent, Utah-Idaho Company, secretly employed respondent, E. R. Wooley, to go to New York City, New York, and there interview the owner of the assets of said Delta Corporation, and the said E. R. Wooley made untruthful statements regarding the value of said corporation's factory, with the purpose and object of discouraging said owner to the end that he would quit operating said corporation's factory and convey the same to respondent, Utah-Idaho Company, at an unreasonably low price. Thereafter in January, 1920, respondent Utah-Idaho Company, through respondent Wooley, as its agent, purchased practically all the stock of said independent enterprise and all of its properties and assets in the name of the Great Basin Sugar Company to which company said stock, properties and assets were transferred. The Great Basin Sugar Company was organized under the laws of the State of Delaware by the respondent Wooley and certain individuals secured by him to act as incorporators and directors, for the purpose of acting as purchaser of aforesaid stock, properties and assets, which were purchased for the sum of $1,600,000, and certain other considerations, and the transaction was financed by respondent Utah-Idaho Company. Thereafter the Great Basin Sugar Company sold to the respondent Utah-Idaho Company all said stock, properties and assets acquired from the Delta Beet Sugar Corporation. In connection with the foregoing transactions the Delta Beet Sugar Corporation and certain other individuals interested therein, executed a written contract never thereafter to engage in the sugar industry or in any allied or associated industry in the State of Utah. As a result of the foregoing transactions, said independent enterprise was merged with respondent Utah-Idaho Company and the competition theretofore existing between said independent enterprise and corporate respondents as hereinbefore set out, was eliminatel.

(*k*) On or about March 8, 1920, the respondent Utah-Idaho Sugar Company caused to be published and circulated in nine newspapers in the State of Idaho, and in thirty-seven newspapers in the State of Utah, all circulating in the territory wherein competing independent enterprises and factories were and are operating, certain advertisements addressed to farmers and beet growers, containing insinuating statements to the effect that such competing companies were unreliable and financially irresponsible, and suggesting that farmers could safely contract for growing beets only with corporate respondents.

(*l*) On or about February 25, 1920, respondent, Utah-Idaho Sugar Company purchased advertising space in several weekly and daily newspapers circulating in Utah and Idaho where competing independent enterprises and factories were operating and advised the publishers of said newspapers that it was planning to extend its advertising activities and would choose, as a medium, the paper friendly and loyal to its, said respondent's, organization, thus seeking to influence by the use of great wealth the editorial policies of said newspapers to be in favor of corporate respondents as against competitors in regard to the beet sugar industry.

Respondents at all times mentioned hereinbefore and in the record of this proceeding, and up to the time when the taking of testimony ceased, were continuing to carry out the purposes of the secret agreement, combination and conspiracy hereinbefore set out by means of acts, practices and conduct of a nature similar to the acts and things done to carry out said conspiracy hereinbefore set out, and said acts and things done, had and have the effect of obstructing, hindering, suppressing and eliminating competition in the purchase of sugar beets and the manufacture and sale of beet sugar in interstate commerce, and especially in the States of Utah, Idaho, Oregon, Washington and Nevada.

CONCLUSION.

The acts and things done by respondents as hereinbefore set out under the conditions and in the circumstances described in the foregoing findings, constitute unfair methods of competition 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 answers of the respective respondents (E. F. Cullen not having appeared or answered), the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the 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."

Now, therefore, it is ordered, That the respondents, Utah-Idaho Sugar Company and the Amalgamated Sugar Company, each of them and their officers, agents and employees and E. R. Wooley 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 divisions 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 manufacture and sale of refined beet sugar, in interstate commerce.

(4) By using their 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 of 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.

No service of the complaint having been made upon the respondent, E. F. Cullen, *it is further ordered* that the complaint herein be, and the same is hereby, dismissed as to the said respondent, E. F. Cullen.

By the Commission, Commissioners Van Fleet and Gaskill, dissenting. Memorandum dissent by Commissioner Van Fleet attached.

Dissent by Commissioner Van Fleet.

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. *E. C. Knight Co.*, 156 U. S. 1; *Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238; *McCluskey* v. *Marysville & Northern Ry. Co.*, 243 U. S. 251; *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 Company* v. *Mississippi*, 257 U. S. 129. But it is contended in support of the jurisdiction of the Commission that such interference with the source of suply of respondent's competitors affects the ability of such competitors to produce sugar to be sold in interstate commerce and that such acts are thus an interference with such commerce. This theory is based on those cases holding that intrastate acts which directly interfere with a current of commerce may be controlled by Congress. *Swift* v. *U. S.*, 196 U. S. 375; *United States* v. *Patten*, 226 U. S. 525; *United States* v. *Ferger*, 250 U. S. 199; *Stafford* v. *Wallace*, 258 U. S. 495; *Board of Trade of the City of Chicago* v. *Olsen, et al*, U. S. Sup. Apr. 16, 1923. [262 U. S. 1.]

There is no conflict between the cases holding that production and manufacture are not commerce and the doctrine laid down in the Swift and following cases. In the first case there is no interstate commerce unless the acts themselves are such. In the second case there *already is* interstate commerce which is being affected or obstructed by the intrastate acts. Confusion may arise if the intrastate acts regulated under the doctrine in the Swift case be compared with intrastate acts where there is not already commerce.

Purely intrastate acts may or may not come under the Federal jurisdiction depending on whether they affect *existing* interstate commerce. The *same acts* thus may or may not be subject to such jurisdiction. This is well illustrated in the two cases of *Hill* v. *Wallace*, 42 Sup. Ct. Rep. 453 [259 U. S. 44]; *Board of Trade of the City of Chicago* v. *Olsen, et al*, U. S. Sup. Apr. 16, 1923 [262 U. S. 1]. When such acts are subject to such jurisdiction it is not because they are commerce, but because they affect or obstruct it.'

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.

FEDERAL TRADE COMMISSION
v.
M. KAPLAN, TRADING AS THE BUTTERFLY SHOP.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1026—October 3, 1923.

SYLLABUS.

Where an individual engaged in the sale at retail of hosiery composed of materials other than silk produced from the cocoon of the silk worm, but resembling silk in appearance and texture, in competition with concerns who dealt in hosiery composed of genuine silk and who so represented the same, displayed said hosiery in his store and in the window thereof as "Silk Hose 25¢ and 35¢ a Pair"; with a tendency and capacity to mislead and deceive the purchasing public, and to induce the purchase of said hosiery in the belief that it was fabricated from the silk of the cocoon of the silk worm:

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

COMPLAINT.

Acting in the public interest 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 charges that M. Kaplin, trading as Butterfly Shop, and more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, M. Kaplin, is an individual doing business under the trade name and style of Butterfly Shop, with his place of business in the City of Washington, District of Columbia.

PAR. 2. Respondent is engaged in the business of selling to the retail trade in the District of Columbia wearing apparel for men and women consisting of hose, cravats and similar articles, and has carried on such business in direct, active competition with other persons, partnerships and corporations similarly engaged.

PAR. 3. Respondent in the course and conduct of said business now offers for sale, and sells hosiery and other articles manufactured from materials or fabrics other than silk, but resembling silk in appearance and texture, and has displayed same in his place of business, and respresented by signs and other means that said hosiery and other articles were, in fact, manufactured of silk. The aforesaid signs and representations so made and used by respondent in connection with the sale of the said hosiery and other articles were and are false and misleading, and had and have the tendency and capacity to induce the purchasing public to purchase the said hosiery and other articles so advertised by respondent, as and for silk. The said hosiery and other articles being in truth and in fact composed, fabricated and manufactured entirely from materials containing no true silk whatever but only imitations thereof.

PAR. 4. There are a considerable number of competitors of respondent who display for sale and sell hose, the material or fabric of which is composed of silk, and who display for sale and by means of signs or other advertising matter, truthfully represent and describe said product as silk, which said product is sold in competition with the product of respondent.

PAR. 5. The above alleged acts and things done by 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.

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, M. Kaplan, trading as the Butterfly Shop, charging him with unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein and testimony having been taken thereupon this proceeding came on for final hearing and the Commission being fully advised in the premises and upon consideration thereof makes this its report stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, M. Kaplan, an individual, has conducted a business since September 22, 1922, under the trade name and style of Butterfly Shop which said business is located at the premises of 1201½ Pennsylvania Avenue NW., in the City of Washington, District of Columbia, where he is engaged in selling to the retail trade in the District of Columbia wearing apparel for men and women consisting of hosiery, cravats and other articles. In the course and conduct of his said business respondent is in direct and active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. Respondent, during the month of January, 1923, and subsequent to said date sold and offered for sale hosiery manufactured from materials or fabrics other than silk produced from the cocoon of the silk worm, but resembling silk in appearance and texture and displayed said hosiery in his store and in the window of said store and represented by signs that said hosiery was made of silk, upon said signs appearing the legend "Silk Hose—25¢ and 35¢ a pair." The signs and representations so used by respondent were false and misleading and had the tendency and capacity to mislead and deceive the purchasing public and to induce the said purchasing public to buy said hosiery believing that they were obtaining hosiery fabricated from the silk of the cocoon of the silk worm, when in truth and in fact said hosiery was manufactured entirely from materials containing no true silk whatsoever, but from a material obtained from wood pulp and cotton and known generally as artificial silk.

PAR. 3. There are a considerable number of competitors of respondent who display for sale and sell hosiery, the material or fabric of which is composed of silk manufactured from the cocoon of the silk worm, and who display for sale and by means of signs and other advertising matter truthfully represent and describe said products as silk which said products are sold in competition with hosiery sold and offered for sale by the respondent.

CONCLUSION.

The above practice of the said respondent under the conditions and circumstances described in the foregoing findings are unfair methods of competition in commerce and constitute a 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 respondent, testimony and evidence received by the examiner of the Commission and the Commission having made its findings as to the facts and its conclusion that the respondent, M. Kaplan, 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, M. Kaplan, his servants, agents, representatives and employees cease and desist from directly or indirectly;

Using in advertisements, placards or signs in connection with hosiery sold by him the word " silk " or any modification thereof, (1) unless the hosiery on which it is used is made entirely of the silk of the silk worm, or (2) unless where the hosiery is made partly of silk it is accompanied by a word or words aptly and truthfully describing the material or materials of which said hosiery is in part composed.

Respondent is further ordered, To file a report in writing with the Commission sixty (60) days from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION
v.
MOUNTAIN GROVE CREAMERY, ICE AND ELECTRIC COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1041—October 3, 1923.

SYLLABUS.

Where butter manufacturers had long packed and sold butter in cartons of a size, shape and appearance generally known to the purchasing public to contain a full pound, made up either of four units of four ounces each, two units of eight ounces each, or one unit weighing a full pound, in unmarked wrappers; and thereafter a competitor, in disregard of the collective action of members of the industry denouncing the practice and providing for its discontinuance,

Packed, sold and offered for sale butter in cartons similar in dress, shape, size and appearance to the aforesaid cartons and also to those likewise containing a full pound in which said competitor had theretofore sold its butter, but which actually contained units weighing less than the aforementioned weights and aggregating less than a full pound; thereby advisedly placing in the hands of its retailer customers means which enabled and encouraged them to sell such underweight units in their unmarked wrappers as and for units of one-fourth pound, one-half pound and one pound, respectively;

With the result that the purchasing public was deceived in reference to the quantity of butter contained in said cartons, notwithstanding the marking of the weight thereon, and also in respect of that contained in the aforesaid units, and the concern's sales were increased at the expense of its competitors who refused so to aid retailers in such practices:

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

COMPLAINT.

Acting in the public interest 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 charges that the Mountain Grove Creamery, Ice and Electric Company, a corporation, more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mountain Grove Creamery, Ice and Electric Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the City of Mountain Grove, in said State, and with creameries located at Mountain Grove and Carthage, Missouri. Respondent was at all times hereinafter mentioned and still is, engaged in the business of manufacturing butter, ice, ice cream and electric current with which said current said respondent supplies the City of Mountain Grove, Missouri, with electric power. Respondent markets or sells its said butter to or through jobbers and retail dealers located in various States of the United States, causing its said product, when so sold, to be transported in commerce from its principal creameries in the Cities of Mountain Grove and Carthage, Missouri, to purchasers located in other States of the United States, and there is now and was at all times hereinafter mentioned a constant current of trade and commerce in said butter manufactured by said respondent between and among the various States of the United States. In the course and conduct of its said butter business, respondent continuously has been and is now in competition with other individuals, partnerships and corporations manufacturing and selling butter in commerce among the States of the United States.

PAR. 2. That the respondent, Mountain Grove Creamery, Ice and Electric Company, in the course and conduct of its said butter business as described in Paragraph One hereof, had for more than one year prior to the year 1918, marketed, sold and transported in commerce its butter to purchasers in various States of the United States in packages or cartons of the recognized standard weight of sixteen ounces or one pound; that said respondent for more than one year subsequent to the year 1918, caused its said butter to be put up in packages or cartons containing from one to two ounces less than the recognized standard weight of sixteen ounces or one pound, and marketed, sold and transported the same in commerce to purchasers in various States of the United States; that notwithstanding said packages or cartons were marked showing the weight of the product contained, the same were similar in dress, shape, size and appearance and simulated the packages or cartons of its said product previously sold in commerce by said respondent containing the recognized standard weight of sixteen ounces or one pound; that the sale by respondent of said product in commerce in an odd-weight package or carton less than the recognized standard weight of sixteen ounces or one pound has the capacity and tendency to deceive or mislead the purchaser and/or does deceive or mislead the purchaser into the erroneous belief that the said package or carton contained the recognized standard weight of sixteen ounces or one pound of said product, when in truth and in fact said package or carton contained from one to two ounces less butter than the recognized standard weight of sixteen ounces or one pound.

PAR. 3. It is now, and has been the custom of the trade and consuming public for a long period of years, to advertise, purchase, sell and offer for sale, butter in the standard recognized quantity of sixteen ounces or one pound; that there are a considerable number of competitors of respondent who manufacture and market their products in commerce in sixteen-ounce or one-pound packages or cartons of similar size, shape and appearance as that used by respondent, which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing respectively four ounces, eight ounces and one pound. The standard and customary carton in which such units are placed by creameries is such as to contain one full pound. In each such carton is placed either four of the four ounce, two of the eight ounce or one of the full pound units. Each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholsale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the States of Arkansas, Texas and Oklahoma sell to customer or ultimate purchaser said separate unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinafter more particularly described purchasers were accustomed to and did receive the full weight units of four ounces, eight ounces and one pound respectively. In imitation of the form of such units of standard and customary size and weight. and likewise dressed in unmarked wrappers but containing less weight, respondent shapes butter in sizes weighing respectively and approximately three and one-half ounces and three and three-quarter ounces, seven and seven and one-half ounces, and fourteen and fifteen ounces. Respondent likewise places four, two, or one such odd weight units respectively in cartons of the size, character and description set out in paragraph 2 hereof. These it sells and ships as described in paragraph 1 hereof to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for, and as, four ounce, eight ounce and one pound units respectively, while in truth and in fact such units contain less than such respective weights. The carrying out of this deception and the circumstance which makes it possible is well known to respondent, and although respondent is ostensibly complying with the law in marking the exact weight of the total contents on the outer wrapper or carton, respondent knows or should know that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units, and respondent by shaping, dressing and packing butter in such undersized and odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to commit a fraud on the consumer or purchaser, respondent thereby increasing its own sales to the disadvantage of manufacturers who refuse to so aid such retailers in the practice of said fraud.

PAR. 5. Investigation by the Commission, based on numerous complaints, revealed that the practice herein complained of was confined almost wholly to the states of Arkansas and Texas. To eliminate this practice or method more speedily than could be accomplished by formal proceedings instituted against individual concerns and for the enlightenment of the Commission butter manufacturers competing in said territory assembled, at the invitation of the Commission, at Dallas, Texas, on April 2, 1920, and there in open meeting presided over by a duly authorized representative of the Commission, did, by means of resolution define and denounce said method of competition which in the experience of the industry had proven to result in fraud on the public. At the time of its adoption by representatives of the industry, and in the announcement thereof by the Commission, such resolution was designated as, and known as "Trade Practice Submittal--Butter Manufacturers," August 1, 1920, was named in the same resolution as the day upon which the practice of the method so denounced was to entirely cease and which on said day did practically cease; among other purposes intended to be accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceeding due to the voluntary and simultaneous action of the industry in eliminating the method or practice so defined and denounced.

PAR. 6. Respondent was and is well acquainted with the purpose, intent and spirit of the said "Trade Practice Submittal." Respondent was not represented at said meeting of April 2, 1920, but it expressed its approval thereof and announced to the Commission that it would discontinue the practice herein complained of on August 1, 1920; such expression and announcement was communicated to competitors in attendance at said meeting on April 2, 1920; many competitors each acting on such mutual understanding did on August

1, 1920, abandon said method while respondent has continuously and is now indulging in the same, by so continuing such practice respondent sought to and did gain an unfair competitive advantage over such competitors as did carry out and abide by said understanding.

PAR. 7. The said "Trade Practice Submittal" after stating among other things that the practice complained of was so widespread in the southwestern states that any manufacturer desiring to compete in the markets thereof "is compelled as a matter of self-protection to adopt the practice above described," reads in part as follows:

> *Now, therefore,* We, butter manufacturers assembled in open meeting, condemn the practice above described as a method of unfair competition and as against the public interest, and we hereby petition the Federal Trade Commission to bring its action against any and all manufacturers, makers, or shippers of butter who, after August 1, 1920, sell or offer for sale, in cartons, rolls, or prints, butter in quantities or weights other than the standard weights of 16 ounces, or of 8 ounces, or of 4 ounces; or who ship or sell or offer for sale, butter in such standard weight packages, prints, rolls, or cartons, upon any of which is not marked the net weight of the butter contained therein, in accordance with subdivision (c) of Regulation 29, of the "Rules and Regulations for the enforcement of the Food and Drug Act" as amended (34 Stats. 768), and which as published by the Department of Agriculture reads as follows:
>
> "(*c*) The statement of the quantity of the contents shall be plain and conspicuous, shall not be a part of or obscured by any legend or design, and shall be so placed and in such characters as to be readily seen and clearly legible when the size of the package and the circumstances under which it is ordinarily examined by purchasers or consumers are taken into consideration."

PAR. 8. That such shaping, dressing, and packing of butter is calculated and designed to, and has a tendency and capacity to, and does, deceive the public into the belief that it is purchasing butter in units, cartons, or packages containing more butter than said units, cartons or packages do in fact contain and that the above alleged acts and things done by 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 making of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define is powers and duties, and for other purposes," approved September 26, 1914.

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, Mountain Grove Creamery, Ice, and Electric Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having filed its answer herein, and having entered into a stipulation in writing as to the facts, thereupon this matter came on for final hearing, and the Commission being fully advised in the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Mountain Grove Creamery, Ice and Electric Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri with its principal office and place of business in the City of Mountain Grove in said State and with creameries located at Mountain Grove and Carthage, Missouri. Respondent was at all times hereinafter mentioned, and is still engaged in the business of manufacturing butter, ice, ice cream, and electric current, with which said current said respondent supplies the City of Mountain Grove with electric power. Respondent markets and sells its said butter to or through jobbers and retail dealers located in the various states of the United States, causing its said products when so sold to be transported in commerce from its principal creameries in the cities of Mountain Grove and Carthage, Missouri, to purchasers located in other states of the United States, and there is now and at all times hereinafter mentioned [has been] a constant current of trade and commerce in said butter manufactured by said respondent between and among the various states of the United States. In the course and conduct of its said butter business respondent continuously has been and is now in competition with other individuals, partnerships and corporations manufacturing and selling butter in commerce among the states of the United States.

PAR. 2. That the respondent, Mountain Grove Creamery, Ice and Electric Company, in the course and conduct of its said butter business as described in paragraph 1 hereof had for more than one year prior to the year 1918, marketed, sold and transported in commerce its butter to purchasers in the various states of the United States in packages or cartons of the recognized standard weight of

16 ounces or one pound; that said respondent for more than one year subsequent to the year 1918 caused its said butter to be put up in packages or cartons containing from one to two ounces less than the recognized standard weight of 16 ounces or one pound, and marketed, sold and transported the same in commerce to purchasers in various states of the United States; that notwithstanding said packages or cartons were marked showing the weight of the product contained, the same were similar in dress, shape and size and appearance and simulated the packages or cartons of its said products previously sold in commerce by said respondent containing the recognized standard weight of 16 ounces or one pound; that the sale by respondent of said product in commerce in an odd weight package or carton less than the recognized standard weight of 16 ounces or one pound has the capacity and tendency to deceive and mislead the purchasers and has deceived and mislead purchasers into the erroneous belief that the said package or carton contained the recognized standard weight of 16 ounces or one pound of the said product, when in truth and in fact said package or carton contained from one to two ounces less butter than the recognized standard weight of 16 ounces or one pound.

PAR. 3. It is now and has been the custom of the trade and consuming public for a long period of years to advertise, purchase, sell and offer for sale butter in the standard recognized quantity of 16 ounces or one pound; that there are a considerable number of competitors of respondent who manufacture and market their products in commerce in 16 ounce or one pound packages or cartons of similar size, shape and appearance as that used by respondent which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing, respectively, 4 ounces, 8 ounces and one pound. The standard and customary carton in which such units are placed by creameries is such as to contain one full pound. In each such carton is placed either 4 of the 4 ounce, two of the 8 ounce, or one of the full pound units. Each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholesale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the states of Arkansas, Texas, and Oklahoma sell to customer or ultimate purchaser said separately unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinafter more particularly described purchasers were accustomed to and did receive the full weight unit of 4 ounces, 8 ounces and one pound, respectively. In imitation of the form of such standard and customary size and weight, and likewise dressed in unmarked wrappers but containing less weight, respondent shapes butter in sizes weighing, respectively, and approximately, 3½ ounces and 3¾ ounces, 7 and 7½ ounces, and 14 and 15 ounces. Respondent likewise places four, two or one such odd weight units respectively in cartons of the size, character and description set out in paragraph 2 hereof. These it sells and ships as described in paragraph 1 hereof to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for and as 4 ounces, 8 ounces and one pound units respectively while in truth and in fact such units contain less than such respective weights. The carrying out of this deception and the circumstances which make it possible are well known to respondent and although respondent is ostensibly complying with the law by marking the exact weight of the total contents on the outer wrapper or carton, respondent knows that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units and respondent by shaping, dressing and packing butter in such undersized and odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to sell such smaller odd weight units as and for units of ¼ pound, ½ pound and 1 pound units or packages, respondent thereby increasing its own sales to the disadvantage of manufacturers who refuse to so aid retailers in the practice so described.

PAR. 5. Butter manufacturers competing in the states of Arkansas, Oklahoma and Texas assembled at the invitation of the Federal Trade Commission at Dallas, Texas, on April 2, 1920, and there, in open meeting, presided over by a duly authorized representative of the Commission, did by means of resolution define and denounce said method of competition which in the experience of the industry had proven to result in fraud on the public. At the time of its adoption by representatives of the industry and in the announcement thereof by the Commission such resolution was designated as and known as "Trade Practice Submittal—Butter Manufacturers." August 1, 1920, was named in the same resolution as the day upon which the practice or method so denounced was to entirely cease and which on said day did practically cease; among the purposes understood by respondent to be intended to be accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceedings due to the voluntary and simultaneous action of the industry in eliminating the method or practice so defined and denounced. Said Trade Practice Submittal is stipulated to be and is part of the facts herein. Respondent continued the practice charged in the complaint and described herein, after said August 1st, 1920, and until January, 1922.

PAR. 6. That such shaping, dressing and packing of butter in said odd weight units hereinbefore described is calculated and designed to, and has a tendency and capacity to, and does deceive the public into the belief that it is purchasing butter in units, cartons and packages containing more butter than said units, cartons and packages do in fact contain.

CONCLUSION.

The above practices of said respondent, under the conditions and circumstances described in the foregoing findings 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, and a stipulation as to the facts, 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 Mountain Grove Creamery, Ice and Electric Company, its officers, agents and employees do cease and desist from selling or offering for sale to distributors, dealers, or others, butter in shapes, sizes and dress in imitation of, or resembling the standard or recognized shapes and sizes generally known to the purchasing public to contain four ounces, eight ounces and one pound of butter, respectively, when such shapes and sizes contain less than said standard respective weights.

FEDERAL TRADE COMMISSION
v.
THE WICHITA CREAMERY COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1042—October 3, 1923.

SYLLABUS.

Where butter manufacturers had long packed and sold butter in cartons of a size, shape and appearance generally known to the purchasing public to contain a full pound, made up either of four units of four ounces each, two units of eight ounces each or one unit weighing a full pound, in unmarked wrappers; and thereafter a competitor, in disregard of the collective action of members of the industry, to which it had been a party, denouncing the practice and providing for its discontinuance,

Packed, sold and offered for sale butter in cartons similar in dress, shape, size and appearance to the aforesaid cartons and also to those likewise containing a full pound in which said competitor had theretofore sold its butter, but which actually contained units weighing less than the aforementioned weights and aggregating less than a full pound; thereby advisedly placing in the hands of its retailer customers means which enabled and encouraged them to sell such under-weight units in their unmarked wrappers as and for units of one-fourth pound, one-half pound and one pound, respectively;

With the result that the purchasing public was deceived in reference to the quantity of butter contained in said cartons, notwithstanding the marking of the weight thereon, and also in respect of that contained in the aforesaid units:

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

COMPLAINT.

Acting in the public interest 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 charges that The Wichita Creamery Company, a corporation, more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Wichita Creamery Company, is a corporation organized under and by virtue of the laws of the State of Kansas in the year 1909, with its principal office and place of business in the City of Wichita, in said State. Respondent was at all times hereinafter mentioned, and still is, engaged in the business of manufacturing butter and in marketing or selling the same to jobbers and retail dealers located in various States of the United States, causing said product, when so sold, to be transported in commerce from its principal place of business in the State of Kansas to purchasers located in other States of the United States; there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in said butter manufactured by said respondent between and among the various States of the United States. In the course and conduct of its said business, respondent continuously has been, and is now, in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That the respondent, The Wichita Creamery Company, in the course of its business as described in paragraph 1, hereof, had for a number of years subsequent to the date of its organization in the year 1909, marketed, sold and transported in commerce its product to purchasers in various States of the United States in packages or cartons of the recognized standard weight of one pound, one-half pound and one-quarter pound quantities; that said respondent for more than one year prior to August 1, 1920, caused its said product to be put up in packages or cartons containing from one to two ounces less than the recognized standard weight of one pound, one-half pound and one-quarter pound quantities, and marketed, sold and transported the same in commerce to purchasers in various States of the United States; that said respondent, subsequent to August 1, 1920, caused its said product to be put up, marketed, sold and transported in commerce, in packages or cartons of fifteen ounces, one ounce less than the recognized standard weight of sixteen ounces or one pound; that notwithstanding said packages or cartons were marked showing the correct weight, the same were similar in dress, shape, size and appearance and simulated the packages or cartons of said product previously sold by said respondent containing the recognized standard weight of one pound, one-half pound and one-quarter pound quantities; that the sale by respondent of said product in commerce in odd weights less than the recognized standard weight of one pound, one-half pound and one-quarter pound packages or cartons has the capacity and tendency to mislead and deceive the purchaser and/or does mislead and deceive the purchaser into the erroneous belief that said packages or cartons contained the recognized standard weight of one pound, one-half pound, or one-quarter pound of said product, when in truth and in fact said packages or cartons contain from one to two ounces less than the said recognized standard weight.

PAR. 3. It is now and has been the custom of the trade and consuming public for a long period of years, to advertise, purchase, sell and offer for sale, butter in the standard recognized quantities of one pound, one-half pound and one-quarter pound; that there are a considerable number of competitors of respondent who manufacture and market their products in commerce in one pound, one-half pound and one-quarter pound packages or cartons of similar size, shape and appearance as that used by respondent, which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing respectively four ounces, eight ounces and one pound. The standard and customary carton in which such units are placed by creameries is such as to contain one full pound. In each such carton is placed either four of the four ounce, two of the eight ounce or one of the full pound units. Each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholesale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the States of Arkansas, Texas and Oklahoma sell to customer or ultimate purchaser said separate unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinafter more particularly described purchasers were accustomed to and did receive the full weight units of four ounces, eight ounces and one pound, respectively. In imitation of the form of such units of standard and customary size and weight, and likewise dressed in unmarked wrappers but containing less weight, respondent shapes butter in sizes weighing respectively and approximately three and one-half ounces and three and three-quarter ounces, seven and seven and one-half ounces and fourteen ounces. Respondent likewise places four, two or one such odd weight units respectively in cartons of the size, character and description set out in paragraph 2 hereof. These it sells and ships as described in paragraph 1 hereof to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for, and as, four ounce, eight ounce and one pound units respectively, while in truth and in fact such units contain less than such respective weights. The carrying out of this deception and the circumstance which makes it possible is well known to respondent, and although respondent is ostensibly complying with the law by marking the exact weight of the total contents on the outer wrapper or carton, respondent knows or should know that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units, and respondent by shaping, dressing and packing butter in such undersized and odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to commit a fraud on the consumer or purchaser, respondent thereby increasing its own sales to the disadvantage of manufacturers who refuse to so aid such retailers in the practice of said fraud.

PAR. 5. Investigation by the Commission, based on numerous complaints, revealed that the practice herein complained of was confined almost wholly to the States of Arkansas and Texas. To eliminate this practice or method more speedily than could be accomplished by formal proceedings instituted against individual concerns and for the enlightenment of the Commission, butter manufacturers competing in said territory assembled, at the invitation of the Commission, at Dallas, Texas, on April 2, 1920, and there in open meeting presided over by a duly authorized representative of the Commission did, by means of resolution define and denounce said method of competition which in the experience of the industry had proven to result in fraud on the public. At the time of its adoption by representatives of the industry, and in the announcement thereof by the Commission, such resolution was designated as, and known as "Trade Practice Submittal—Butter Manufacturers." August 1, 1920, was named in the same resolution as the day upon which the practice of the method so denounced was to entirely cease and which on said day did practically cease; among other purposes intended to be accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceeding due to the voluntary and simultaneous action of the industry in eliminating the method or practice so defined and denounced.

PAR. 6. That respondent was, and is, well acquainted with the purpose, intent and spirit of the action taken by representatives of the industry at Dallas, Texas, on April 2, 1920, in the form of said Trade Practice Submittal, respondent having expressed its approval, among other ways, by causing its representatives to be present thereat, such representatives having signed said resolution on and in behalf of respondent.

PAR. 7. That said "Trade Practice Submittal" after stating among other things that the practice complained of was so widespread in the southwestern States that any manufacturer desiring to compete in the markets thereof "is compelled as a matter of self-protection to adopt the practice above described," reads in part as follows:

Now, therefore, We, butter manufacturers assembled in open meeting, condemn the practice above described as a method of unfair competition and as against the public interest, and we hereby petition the Federal Trade Commission to bring its action against any and all manufacturers, makers, or shippers of butter who, after August 1, 1920, sell or offer for sale, in cartons, rolls, or prints, butter in quantities or weights other than the standard weights of 16 ounces, or of 8 ounces, or of 4 ounces; or who ship or sell or offer for sale, butter in such standard weight packages, prints, rolls or cartons, upon any of which is not marked the net weight of the butter contained therein, in acordance with subdivision (*c*) of Regulation 29, of the "Rules and Regulations for the enforcement of the Food and Drug Act" as amended (34 Stats. 768), and which as published by the Department of Agriculture reads as follows:

"(*c*) The statement of the quantity of the contents shall be plain and conspicuous, shall not be a part of or obscured by any legend or design, and shall be so placed and in such characters as to be readily seen and clearly legible when the size of the package and the circumstance under which it is ordinarily examined by purchasers or consumers are taken into consideration."

PAR. 8. That such shaping, dressing and packing of butter is calculated and designed to, and has a tendency and capacity to, and does, deceive the public into the belief that it is purchasing butter in units, cartons or packages containing more butter than said units, cartons or packages do in fact contain and that the above alleged acts and things done by 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.

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, The Wichita Creamery Company, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed its answer herein, and having entered into a stipulation in writing as to the facts, in which stipulation it admitted that the matters and things alleged in said complaint are true in the manner and form as alleged therein, and thereupon this matter came on for final hearing, and the Commission being fully advised in the premises and upon consideration thereof, makes this its final report stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Wichita Creamery Company, is a corporation organized under and by virtue of the laws of the State of Kansas in the year 1909, with its principal office and place of business in the City of Wichita, in said State. Respondent was at all times hereinafter mentioned and still is engaged in the business of manufacturing butter and in marketing or selling same to jobbers and retail dealers located in various States of the United States, causing said products when so sold to be transported in commerce from its principal place of business in the State of Kansas to purchasers located in other States of the United States; there is now and was at all times hereinafter mentioned a constant current of trade and commerce in said product manufactured by said respondent between and among the various States of the United States. In the course and conduct of its said business respondent at all times has been and is now in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That the respondent, Wichita Creamery Company, in the course and conduct of its business as described in paragraph 1 hereof had for a number of years subsequent to the date of its organization in the year 1909 marketed, sold and transported in commerce its products to purchasers in various States of the United States in packages or cartons of recognized standard weight of 1 pound, ½ pound and ¼ pound quantitites, that said respondent for more than one year prior to August 1, 1920, caused the said product to be put up in packages or cartons containing from 1 to 2 ounces less than the recognized standard weight of 1 pound, ½ pound and ¼ pound quantities and marketed, sold and transported the same in commerce to purchasers in various States of the United States; that said respondent subsequent to August 1, 1920, caused its said product to be put up, marketed and sold and transported in commerce in packages or cartons of 15 ounces, 1 ounce less than the recognized standard weight of 16 ounces, or 1 pound; that notwithstanding said packages or cartons were marked showing the correct weight the same were similar in dress, shape, size and appearance and simulated the packages or cartons of said product previously sold by respondent containing the recognized standard weight of 1 pound,

½ pound and ¼ pound quantities; that the sale by respondent of said product in commerce in odd weights less than the recognized standard weight of 1 pound, ½ pound or ¼ pound quantities has the capacity and tendency to mislead and deceive the purchasers and has misled and deceived purchasers into the erroneous belief that the said packages or cartons contained the recognized standard weight of 1 pound, ½ pound and ¼ pound in said carton when in truth and in fact said packages or cartons contained from 1 to 2 ounces less than the said recognized standard weight.

PAR. 3. It is now and has been the custom of the trade and consuming public for a long period of years to advertise, purchase, sell and offer for sale butter in standard recognized quantities of 1 pound, ½ pound and ¼ pound; that there are a considerable number of competitors of respondent who manufacture and market their product in commerce in 1 pound, ½ pound and ¼ pound packages or cartons of similar size, shape and appearance as that used by respondent which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing respectively, 4 ounces, 8 ounces and 1 pound. The standard and customary carton in which such units are placed by creameries is such as to contain one full pound. In each such carton is placed either 4 of the 4 ounce, 2 of the 8 ounce cr 1 of the full pound units, each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholesale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the States of Oklahoma, Texas and Arkansas sell to customers or purchasers said separate unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinbefore more particularly described purchasers were accustomed to and did receive the full weight units of 4 ounces, 8 ounces and 1 pound respectively. In imitation of the form of such units of standard and customary size and weight and likewise dressed in unmarked wrappers but containing less weight, respondent shapes butter in sizes weighing, respectively and approximately, 3½ ounces and 3¾ ounces, 7 and 7½ ounces and 14 and 15 ounces. Respondent likewise places 4, 2 and 1 odd weight units, respectively, in cartons of the size, character and description set out in paragraph 2 hereof. These it sells and ships as described in paragraph 1 hereof to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for and as 4 ounces, 8 ounces and 1 pound units, respectively, while in truth and in fact such units contain less than such respective weights. The carrying out of the deception and the circumstances which make it possible are well known to respondent and although respondent is ostensibly complying with the law by marking the exact weight of the total contents on the outer wrapper or carton, respondent knows that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units, and respondent by shaping, dressing and packing butter in such undersized and odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to sell such smaller odd weight units as and for ¼, ½ and 1 pound units or packages.

PAR. 5. Butter manufacturers competing in the States of Arkansas, Oklahoma and Texas assembled at the invitation of the Federal Trade Commission at Dallas, Texas, on April 2, 1920, and there, in open meeting, presided over by a duly authorized representative of the Commission did, by means of resolution, define and denounce said method of competition which, in the experience of the industry, had proven to result in fraud on the public. At the time of its adoption by representatives of the industry and in the announcement thereof by the Commission such resolution was designated as and known as "Trade Practice Submittal—Butter Manufacturers." August 1, 1920, was named in the same resolution as the day upon which the practice or method so denounced was to entirely cease and which on said day did practically cease; among other purposes understood by respondent to be intended to be accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceedings due to the voluntary and simultaneous action of the industry in eliminating the method or practice so defined and denounced.

PAR. 6. That respondent was and is well acquainted with the purpose, intent and spirit of the said action taken by representatives of the industry at Dallas, Texas, on April 2, 1920, in the form of said "Trade Practice Submittal," respondent having exercised its approval among other ways by causing its representatives to be present thereat, such representatives, with the consent and by virtue of the authority granted, having signed said resolution on and in behalf of respondent.

PAR. 7. That in compliance with the said "Trade Practice Submittal," respondent promptly discontinued the putting up, shaping of and selling butter in such odd weight units, packages or cartons;

that on or about April 20, 1921, respondent again did shape and sell butter in such odd weight packages and so continued the practice in this proceeding complained of until December 7, 1921.

PAR. 8. That such shaping, dressing and packing of butter in said odd weight units hereinbefore described is calculated and designed to and has the tendency and capacity to and does deceive the public into the belief that it is purchasing butter in units, cartons or packages containing more butter than said units, cartons or packages do in fact contain.

CONCLUSION.

The above practices of said respondent, under the conditions and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce, and constitute a violation of Section 5 of the Act 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 a stipulation as to the facts, 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, the Wichita Creamery Company, its officers, agents and employees, do cease and desist from selling or offering for sale to distributors, dealers, or others, butter in shapes, sizes and dress in imitation of, or resembling, the standard or recognized shapes and sizes generally known to the purchasing public to contain four ounces, eight ounces and one pound of butter, respectively, when such shapes and sizes contain less than said standard respective weights.

FEDERAL TRADE COMMISSION
v.
THE MERIDEN CREAMERY COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1043—October 3, 1923.

SYLLABUS.

Where butter manufacturers had long packed and sold butter in cartons of a size, shape and appearance generally known to the purchasing public to contain a full pound, made up either of four units of four ounces each, two units of eight ounces each or one unit weighing a full pound, in unmarked wrappers; and thereafter a competitor, in disregard of the collective action of members of the industry, to whom it had communicated its acquiescence therein, denouncing the practice and providing for its discontinuance,

Packed, sold and offered for sale butter in cartons similar in dress, shape, size and appearance to the aforesaid cartons and also to those likewise containing a full pound in which said competitor had theretofore sold its butter, but which actually contained units weighing less than the aforementioned weights and aggregating less than a full pound; thereby advisedly placing in the hands of its retailer customers means which enabled and encouraged them to sell such under-weight units in their unmarked wrappers as and for units of one-fourth pound, one-half pound and one pound, respectively;

With the result that the purchasing public was deceived in reference to the quantity of butter contained in said cartons, notwithstanding the marking of the weight thereon, and also in respect of that contained in the aforesaid units, and the concern's sales were increased at the expense of its competitors who refused so to aid retailers in such practices:

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

COMPLAINT.

Acting in the public interest 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 charges that The Meriden Creamery Company, a corporation, more particularly hereinafter described and hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, issues this complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Meriden Creamery Company, is a corporation organized and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the City of Kansas City, in said state. Respondent was at all times hereinafter mentioned and still is, engaged in the business of manufacturing butter and in marketing or selling the same to jobbers and retail dealers located in various states of the United States, causing said product, when so sold, to be transported in commerce from its principal place of business in the State of Missouri to purchasers located in other States of the United States, and there is now, and was at all times hereinafter mentioned, a constant current of trade and commerce in said butter manufactured by said respondent between and among the various states of the United States. In the course and conduct of its said business respondent continuously has been and is now in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That the respondent, The Meriden Creamery Company, in the course of its business as described in paragraph 1 hereof, had for more than ten years prior to the year 1918 marketed, sold and transported in commerce its product to purchasers in various States of the United States in packages or cartons of the recognized standard weights of one pound, one-half pound and one-quarter pound quantities; that said respondent had for more than one year prior to the year 1918 marketed, sold and transported in commerce its product known as "Gold Bar Brand" to purchasers in various States of the United States in packages or cartons of the recognized standard weight of sixteen ounces or one pound quantity; that said respondent during and subsequent to the year 1918, caused its said product known as "Gold Bar Brand" to be put up in packages or cartons of fifteen ounces, one ounce less than the recognized standard weight of the package or carton previously sold under said trade brand; that said packages or cartons marked fifteen ounces, were similar in dress, shape, size and appearance and simulated the packages or cartons of said product previously sold by said respondent, containing the recognized standard weight of sixteen ounces or one pound; that the sale by respondent of said product in commerce in fifteen ounce packages or cartons has the capacity and tendency to mislead and deceive the purchaser and/or does mislead and deceive the purchaser into the erroneous belief that said packages or cartons contained sixteen ounces or one pound of said product, when in truth and in fact said packages or cartons contain one ounce less than the said recognized standard weight.

PAR. 3. It is now, and has been the custom of the trade and consuming public for a long period of years, to advertise, purchase, sell and offer for sale, butter in the standard recognized quantities of one pound, one-half pound and one-quarter pound; that there are a considerable number of competitors of respondent who manufacture and market their products in commerce in sixteen ounce or one pound packages or cartons of similar size, shape and appearance as that used by respondent, which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing respectively four ounces, eight ounces and one pound. The standard and customary carton in which such units are placed by creameries is such as to contain one full pound. In each such carton is placed either four of the four ounce, two of the eight ounce or one of the full pound units. Each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholesale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the States of Arkansas, Texas and Oklahoma sell to customer or ultimate purchaser said separate unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinafter more particularly described purchasers were accustomed to and did receive the full weight units of four ounces, eight ounces and one pound, respectively. In imitation of the form of such units of standard and customary size and weight, and likewise dressed in unmarked wrappers but containing less weight, respondent shapes butter in sizes weighing respectively and approximately three and one-half ounces and three and three-quarter ounces, seven and seven and one-half ounces and fourteen ounces. Respondent likewise places four, two or one such odd weight units respectively in cartons of the size, character, and description set out in paragraph 2 hereof. These it sells and ships as described in paragraph 1 hereof to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for, and as, four ounce, eight ounce and one pound units respectively, while in truth and in fact such units contain less than such respective weights. The carrying out of this deception and the circumstance which makes it possible is well known to respondent, and although respondent is ostensibly complying with the law by marking the exact weight of the total contents on the outer wrapper or carton, respondent knows or should know that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units, and respondent by shaping, dressing and packing butter in such undersized and odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to commit a fraud on the consumer or purchaser, respondent thereby increasing its own sales to the disadvantage of manufacturers who refuse to so aid such retailers in the practice of said fraud.

PAR. 5. That such shaping, dressing and packing of butter is calculated and designed to, and has a tendency and capacity to, and does, deceive the public into the belief that it is purchasing butter in units, cartons or packages containing more butter than said units, cartons or packages do in fact contain and that the above alleged acts and things done by 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.

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, The Meriden Creamery Company, charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondent having filed its answer herein and having entered into a stipulation in writing as to the facts, in which stipulation it is admitted that the methods and things alleged in said complaint are true in the manner and form as therein stated, thereupon this matter came on for final hearing and the Commission being fully advised in the premises and upon consideration thereof makes this its report stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, The Meriden Creamery Company, is a corporation organized and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in the City of Kansas City, in said State. Respondent was at all times hereinafter mentioned and still is, engaged in the business of manufacturing butter and in marketing or selling the same to jobbers and retail dealers located in various States of the United States, causing said product, when so sold, to be transported in commerce from its principal place of business in the State of Missouri to purchasers located in other States of the United States, and there is now, and within all times hereinafter mentioned has been a constant current of trade and commerce in said butter manufactured by said respondent between and among the various States of the United States. In the course and conduct of its said business respondent continuously has been and is now in competition with other individuals, partnerships and corporations similarly engaged in commerce among the States of the United States.

PAR. 2. That the respondent, The Meriden Creamery Company, in the course of said business as described in paragraph 1 hereof, and for more than ten years prior to the year 1918, marketed, sold and transported in commerce its products to purchasers in various States of the United States in packages or cartons of the recognized standard weights of one pound, one-half pound and one-quarter pound quantities; that said respondent had for more than one year prior to the year 1918 marketed, sold and transported in commerce its product known as "Gold Bar Brand" to purchasers in various States of the United States in packages or cartons of the recognized standard weight of sixteen-ounce or one-pound quantity; that said respondent during and subsequent to the year 1918, caused its said product known as "Gold Bar Brand" to be put up in packages or cartons of fifteen ounces, one ounce less than the recognized standard weight of the package or carton previously sold under said trade brand; that said packages or cartons marked fifteen ounces, were similar in dress, shape, size and appearance and simulated the packages or cartons of said product previously sold by said respondent containing the recognized standard weight of sixteen ounces or one pound; that the sale by respondent of said product in commerce in fifteen-ounce packages or cartons has the capacity and tendency to mislead and deceive the purchasers and/or does mislead and deceive the purchasers into the erroneous belief that said packages or cartons contain sixteen ounces or one pound of said product, when in truth and in fact said packages or cartons contain one ounce less than the said recognized standard weight.

PAR. 3. It is now and has been the custom of the trade and consuming public for a long period of years to advertise, purchase, sell and offer for sale butter in the standard recognized quantities of one pound, one-half pound and one-quarter pound; that there are a considerable number of competitors of respondent who manufacture and market their products in commerce in sixteen-ounce or one-pound packages or cartons of similar size, shape and appearance as that used by respondent, which said product is sold in competition with the product of respondent.

PAR. 4. To meet the demand of the consuming public for small quantities of butter a custom has long prevailed whereby creameries shape butter in sizes weighing respectively, four ounces, eight ounces and one pound. The standard and customary carton in which said units are placed by creameries is such as to contain one full pound. In each such carton is placed either four of the four-ounce, two of the eight-ounce, or one of the full pound units. Each such unit before being placed in the carton by the creamery is separately dressed in an unmarked wrapper. The butter so shaped, wrapped and packed in such cartons is distributed by and through wholesale dealers or jobbers and is also sold by creameries direct to retail dealers. Retail dealers located in the States of Arkansas, Texas and Oklahoma, sell to customers or ultimate purchasers said separate, unmarked units of butter which bear no designation by which the purchaser may ascertain its weight. Prior to the institution or use of the method or practice hereinafter more particularly described, purchasers were accustomed to and did receive the full weight units of four-ounce, eight-ounce and one pound respectively. In imitation of the form of said units of standard and customary size and weight, and likewise dressed in unmarked wrappers, but containing less weight, respondent shapes butter in sizes weighing respectively, three and three-quarter ounces, seven and one-half ounces and fifteen ounces. Respondent likewise places four, two or one such odd weight units, respectively, in cartons of the size, character and description set out in paragraph 2 hereof. These it sells and ships, as described in paragraph 1 hereof, to retail dealers who supply and sell to customers or purchasers the smaller unmarked units for and as four ounces, eight ounces and one pound units, respectively, while in truth and in fact such units contain less than such respective weights. The carrying out of this deception and the circumstances which make it possible is well known to respondent, and although respondent is ostensibly complying with the law by marking the exact weight of the total contents on the outer wrapper or carton, respondent knows that customarily the outer wrapper or carton is not seen by the ultimate purchaser of the separate smaller units and respondent by shaping, dressing and packing butter in such undersized or odd weight units is knowingly placing in the hands of retailers an instrument which enables and encourages retailers to sell such smaller odd weight units as and for units of four-ounce, eight-ounce and sixteen-ounce units or packages, respondent thereby increasing its own sales to the disadvantage of manufacturers who refuse to so aid retailers in the practice so described.

PAR. 5. Butter manufacturers competing in the States of Arkansas, Oklahoma and Texas assembled at the invitation of the Federal

Trade Commission at Dallas, Texas, on April 2, 1920, and there in open meeting, presided over by a duly authorized representative of the Commission, did by means of resolution define and denounce said method of competition which in the experience of the industry had proven to result in fraud on the public. At the time of its adoption by representatives of the industry and in the announcement thereof by the Commission, such resolution was designated as and known as "Trade Practice Submittal—Butter Manufacturers." August 1, 1920, was named in the same resolution as the day upon which the practice or method so denounced was to entirely cease; among the purposes understood by respondent to be intended to be accomplished by the institution and adoption of such "Trade Practice Submittal" was the obviation of a multiplicity of formal proceeding due to the voluntary and simultaneous action of the industry in eliminating the method or practice so defined and denounced.

PAR. 6. Respondent was, and is, well-acquainted with the purpose, intent and spirit of said "Trade Practice Submittal" which was made part of the facts stipulated herein. Respondent was not represented at said meeting of April 2, 1920, but subsequent thereto, between April 2, 1920, and August 1, 1920, it expressed its approval thereof and announced to the Commission and to competitors engaged in the manufacture of butter that it would discontinue the practice herein complained of on August 1, 1920; such expression and announcement were communicated to competitors in attendance at said meeting on April 2, 1920, and to other competitors not so in attendance. Many competitors, together with respondent, each acting on such mutual understanding, did on August 1, 1920, abandon said method, while respondent later revived and again indulged in said practice complained of, until July, 1921.

PAR. 7. That such shaping, dressing, and packing of butter in said odd weight units hereinbefore described is calculated and designed to, and has a tendency and capacity to, and does deceive the public into the belief that it is purchasing butter in units, cartons and packages containing more butter than said units, cartons and packages do in fact contain.

CONCLUSION.

The above practice of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of Section 5 of the Act 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 a stipulation as to the facts, 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, The Meriden Creamery Company, its officers, agents and employees do cease and desist from selling or offering for sale to distributors, dealers, or others, butter in shapes, sizes and dress in imitation of, or resembling the standard or recognized shapes and sizes generally known to the purchasing public to contain four ounces, eight ounces and one pound of butter, respectively, when such shapes and sizes contain less than said standard respective weights.

FEDERAL TRADE COMMISSION

v.

LAWRENCE S. MAYERS AND CHAUNCEY M. MAYERS, PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF GENEVA WATCH COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 876—October 8, 1923.

SYLLABUS.

Where the City of Geneva, Switzerland, had long enjoyed the reputation of being the place in which were assembled in the largest numbers the world's finest watchmakers, and had become well known to the watch and jewelry trade and to a substantial part of the purchasing public as the place responsible for Switzerland's reputation for watches of excellence, so that the name "Geneva" as applied to a watch had become of particular significance and value; and thereafter an American firm engaged in the sale of imported Swiss watches or watch movements, most of which were not manufactured in Geneva, adopted the trade name "Geneva Watch Co." and the trade mark "Genva" and branded and labeled such watches and watch movements and the containers thereof with said name and mark, and so advertised and sold the same; with the intent and effect of misleading and deceiving the trade and consuming public into believing said watches to have been made in Geneva, Switzerland, and to the prejudice of competitors:

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

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that Lawrence S. Mayers and Chauncey M. Mayers, partners doing business under the firm name and style of Geneva Watch Company, hereinafter referred to as respondents, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions 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," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. Respondents are partners who have been for about ten years last past and are now engaged in a wholesale general jewelry business, with their principal place of business at No. 46 Cortlandt Street in the City and State of New York, under the trade name and style of L. & C. Mayers Company. In the year 1919, respondents, as an addition to their said business, commenced the importation into the United States of watch movements made at various points in Switzerland, which watch movements were fitted into watch cases of American manufacture by respondents and the watches thus assembled were sold by respondents at wholesale to various retail jewelry dealers in various cities and towns in the several States of the United States. Respondents delivered the watches thus sold by causing same to be transported from their said place of business in the City and State of New York, to the purchasers at their several said points of residence. Respondents have continuously conducted said wholesale watch business since said time and still so conduct the same and in the course and conduct thereof respondents continuously have been and are now in competition with other persons, partnerships and corporations engaged in wholesaling in interstate commerce watches of foreign and domestic manufacture. Upon commencing said watch business, or shortly thereafter, respondents chose the trade name "Geneva Watch Company," under which to carry on the said watch business separately and apart from their aforesaid general jewelry business and have ever since the adoption of said name conducted said watch business under the firm name and style "Geneva Watch Company." Respondents, upon the adoption of said name for said watch business, did not discontinue the aforesaid trade name of L. & C. Mayers Company, under which their said general jewelry business had theretofore been conducted, but continued to conduct said general jewelry business thereunder. Respondents have always purchased and still purchase under the trade name and style of L. & C. Mayers Company, the watch movements which they use in their said watch business, but market the watches assembled by them under the trade name and style of "Geneva Watch Company" as hereinbefore set out. Respondents have never manufactured and do not now manufacture any watches or watch movements whatsoever except in so far as the fitting by them of said movements into cases, as hereinbefore set out, may be considered manufacture, and respondents never have owned or operated and do not now own or operate any watch or watch-movement factory in said City of Geneva or elsewhere.

PAR. 2. The City of Geneva in Switzerland has for many years been known to the public throughout the United States as the place of origin of watch movements and watches of a very high degree of excellence and the known reputation of Swiss made watch movements and watches is in a large measure attributable to the excellence of the Geneva product from which city come the finest watches and watch movements made in Switzerland. Two general classes of watches and watch movements are made in said City of Geneva; one of these classes consists of very fine movements and is limited to the product of two or three manufacturers in said city, who market their movements and watches largely through selected representatives and do not cater to the general wholesale trade in the usual manner. The good reputation which all Geneva watches enjoy in the United States springs largely from the excellence of these products. The other class of movements above referred to, although of good quality are substantially inferior in quality to the watch movements mentioned as the first class and are known to the trade as "commercial grade" movements. These "commercial grade" movements are sold by the manufacturers to jobbers and wholesalers indifferently and ultimately form the great bulk of "Geneva" watches offered by the retailers to the consuming public. Said "commercial grade" movements, when imported into the United States, habitually bear, stamped upon the dial and directly under the center pinion, the word "Geneva" and upon the bottom of the dial under the figure "6" the word "Swiss," and said movements, either fitted into cases in Switzerland and imported into the United States, or imported separately and afterwards fitted into cases in the United States, are wholesaled throughout the United States by many of respondent's competitors.

PAR. 3. Respondents well knowing the facts set out in paragraph 2 hereof, and with the purpose of misleading and deceiving the public into the belief that the watch movements imported by them into the United States from places in Switzerland other than the City of Geneva, were and are movements made in said city and of a quality fairly comparable therewith, did, shortly after commencing their aforesaid watch business, the following acts and things:

(*a*) Adopted the trade name "Geneva Watch Company"; and proceeded to conduct said watch business under said name;

(*b*) Procured to be stamped directly under the center pinion on the dial of the watches purchased by them the word "Geneva" and under the figure "6" the word "Swiss";

(*c*) Procured the registration in the United States of the trade mark "Genva" to be used as a mark upon said watches, and after applying for said trade mark, caused the same to be stamped upon the dial of the watches purchased by them in lieu of the word "Geneva";

(*d*) Caused to be inserted in journals of general circulation in the jewelry and watch trade throughout the United States advertisements depicting said watches and containing statements referring to said "Geneva" and "Genva" watches, and caused to be conspicuously inserted in said advertisements their aforesaid trade name "Genva Watch Company," together with statements to the effect that respondents manufactured the watches thus advertised and offered the same direct to the trade at the lowest manufacturer's prices.

Respondents have, since the adoption of such practices, continuously used and still use the same.

PAR. 4. The above alleged acts and things done by respondents had and have the capacity and tendency to mislead and deceive the trade and the consuming public into the mistaken belief that respondents are engaged in the manufacture of watches and watch movements in the City of Geneva, Switzerland; that the watches sold by respondents and advertised by them, as hereinbefore set out, are manufactured in said city and are sold direct to the trade at manufacturers' prices, thus eliminating the middleman's profit, and therefore to induce the trade, and through it the consuming public, to purchase said watches in preference to competing watches whose movements are, like those in respondents' watches, made at points in Switzerland other than the City of Geneva but which are not similarly marked with the word "Geneva" or "Genva," or otherwise represented to be made in said city, and in many instances, to purchase respondents' watches in preference to "commercial grade" watches actually made in the City of Geneva.

PAR. 5. That the above alleged acts and things done by respondents 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.

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, Lawrence S. Mayers and Chauncey M. Mayers, partners doing business under the firm name and style of Geneva Watch Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondents having entered their separate appearances and filed their separate answers herein, hearings were had before Mr. Edward M. Averill, an examiner of the Federal Trade Commission, theretofore duly appointed, at which hearings evidence was introduced in support of the allegations of said complaint and on behalf of the respondents. This proceeding coming on for final hearing and the Commission having heard argument of counsel, and having duly considered the record, 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. Respondents, Lawrence S. and Chauncey M. Mayers, in 1912 started in a wholesale jewelry business as co-partners under the firm name and style of L. & C. Mayers Company. This business has been continued up to the present time and is still conducted under the same name. The present office and place of business is at 46 Cortlandt Street, New York City. Up to July, 1919, in the course of such business, under such trade name, respondents handled among other things, watches, of which either the entire watches or the movements had been made in Switzerland. These watches were obtained by respondents from importers thereof. In July, 1919, respondents, Lawrence S. Mayers and Chauncey M. Mayers, commenced to import watch movements manufactured in Switzerland. They purchased such movements in Switzerland under the trade name of L. & C. Mayers Co., but adopted a new trade name, Geneva Watch Company, under which to conduct the business of placing such movements in cases in this country and selling such completed watches throughout the United States. At the same time, respondents adopted as a trade mark name for such watches the word "Genva." They were subsequently granted registration of "Genva" as a trade mark by the United States Patent Office on May 24, 1921, for use on ladies' and gentlemen's watches, and clocks, without restriction as to place of origin of such watches and clocks or as to whether or not such watches and clocks be of domestic or foreign manufacture. Respondents have ever since continued to sell watches as Geneva Watch Company and under that trade mark name "Genva," at wholesale to various retail jewelry dealers in the various cities and towns in the several states of the United States, and in the course and conduct of such business, have caused such watches to be transported from their said place of business in the City and State of New York to the purchasers at their several places of business in the various States of the United States, thereby being engaged in interstate commerce.

PAR. 2. From the time respondents first started in business as above described, under the name of Geneva Watch Company, in July, 1919, up until the commencement of the investigation by the Commission in October, 1921, less than 50% of the watch movements so imported by respondents, were made in Geneva, Switzerland, the others being made at other points in Switzerland, principally at the City of Bienne. These movements, irrespective of whether they were made in the City of Geneva, or other places in Switzerland, were placed in cases in this country by respondents and sold by them under the trade name Geneva Watch Company and trade mark name "Genva," to retail jewelers throughout the United States as above described.

PAR. 3. A substantial number of such watches so sold by respondents under the trade name Geneva Watch Company and trade mark name "Genva" were also marked on the dial or works or both with the word "Genva," and of the watches so marked, at least 50% of the movements had been made at points in Switzerland, other than the City of Geneva. This marking of the dials and works was discontinued by respondents early in 1922.

PAR. 4. Respondents have also sold some watches, under the trade name Geneva Watch Company and trade mark name "Genva," the movements of which watches were purchased by them in this country from Swiss manufacturers' agents and have gradually ceased their direct purchases of movements in Switzerland, until they have finally come, sometime during 1922, to handle almost exclusively movements purchased from Swiss manufacturers' agents in New York. Such movements have been placed in cases and sold by respondents under the trade name Geneva Watch Company and the trade mark "Genva," although a substantial portion thereof are not manufactured in the City of Geneva, Switzerland, but are manufactured at other points in Switzerland.

PAR. 5. All the watches so sold by respondents as above described under the trade name Geneva Watch Company and trade mark name "Genva" have been delivered by respondents to their customers in individual velvet boxes with the word "Genva" printed in large type upon ribbons sewn across the lower edges of inside of the hinged covers of such boxes. Between the inside covers of such boxes and such ribbons, respondents place cards upon which the following matter is printed:

"Guarantee
This Watch is guaranteed to give satisfaction
It was accurately adjusted and regulated before leaving our factory.
Geneva Watch Co.,
Manufacturers
46 Cortlandt Street. New York."

PAR. 6. Ever since the commencement of their business as Geneva Watch Company, respondents have caused to be inserted in periodicals of general circulation in the jewelry and watch trade throughout the United States, advertisements offering watches for sale and featuring both "Genva" as the general trade mark name of such watches and the trade name Geneva Watch Company as the concern so offering such watches for sale. Respondents have also circulated to the retail jewelry trade throughout the United States two pamphlets, cataloguing and describing the various watches handled by them, which said pamphlets similarly have featured the trade mark name "Genva" and the trade name Geneva Watch Company as the concern so offering such watches for sale. In a number of these advertisements and in each of these pamphlets, watches have been depicted with the word "Genva" appearing on the dials.

PAR. 7. In said advertisements and in said pamphlets, the firm name, Geneva Watch Company has been followed in practically every case with the words "Makers of Fine Watches". Several of said advertisements offer said watches at "Direct Manufacturers' Prices and Service", and other advertisements state that, although many watches offered to the trade are of "unpedigreed origin", one buying standardized watches from the Geneva Watch Company can get "factory prices" and/or "manufacturers' prices".

PAR. 8. There is no statement in any of respondents' advertising in publications or said two pamphlets or on the watches themselves or the individual containers to the effect that any of the watches so offered were obtained at any point in Switzerland other than the City of Geneva.

PAR. 9. Switzerland has for many years been known to the public throughout the United States as the place of origin of watch movements and watches of a high standard of excellence, and the City of Geneva, Switzerland, is well known in the watch and jewelry trade and to a substantial portion of the purchasing public as the place which built up and created the reputation of Switzerland as the point of origin of watches of excellence. The City of Geneva, Switzerland, enjoys and has enjoyed for over 200 years the reputation of being the one place where there are assembled in the largest numbers the finest and most skilled and efficient watchmakers of the world. Watchmakers who are taught the trade of their fathers and schooled in the theory as well as the practice of the trade in the technical institutions established and maintained in that city for that purpose. Great care is taken by the watchmakers' guilds and by the authorities of the City of Geneva to preserve and enhance the high reputation for workmanship, finish, reliability and excellence which that city has attained in the watch movement making industry, and by reason of its reputation the name Geneva in connection with a watch or watch movement is of particular significance and adds value to the product.

PAR. 10. Respondents in the course of their business as above outlined, are in competition with other persons, partnerships and corporations engaged in the business of importing completed watches and watch movements from Geneva and/or other points in Switzerland; and of selling said completed watches and movements after such importers have placed them in cases to retail and wholesale jewelers in the various cities and States of the United States, in considerable quantities. The watches so sold by competitors of respondents, the movements of which were made in the City of Geneva, are marked with the word "Geneva" and/or the fact that such movements were made in the City of Geneva is availed of in the sale of the said watches and found to be of considerable assistance therein, as the watch and jewelry trade generally have a marked preference for watches, the movements of which are made in Geneva as against watches, the movements of which are made at other points in Switzerland.

PAR. 11. The use by the respondents of the trademark "Genva" in connection with the trade name "Geneva Watch Company" is with the purpose and intent of deceiving and misleading the purchasers of said watch movements into the belief that the said watch movements are made in the City of Geneva, Switzerland, and the effect of the adoption and use by the respondent of the trademark "Genva" and the trade name "Geneva Watch Company" is and has been to mislead and deceive the trade and the consuming public into the mistaken belief that the respondents are engaged in the manufacture of watches and watch movements in the City of Geneva, Switzerland, and that the watches or watch movements sold by respondents and advertised by them as hereinbefore set out are manufactured in said city. Such practices of respondents unfairly and injuriously effect the business of competitors of respondents, who are engaged in the importation and sale throughout the United States of watches, the movements of which are made in Geneva and/or other points in Switzerland.

CONCLUSION.

The practices of the said respondents under the conditions and circumstances described in the foregoing findings, 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 the respondents, and testimony and evidence submitted, the trial examiner's report upon the facts and the exceptions thereto, and the Commission having made its findings as to the facts with its conclusion that the 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 respondents, Lawrence L. Mayers and Chauncey M. Mayers, individually and as copartners trading under the name and style of Geneva Watch Company, their agents, servants, representatives and employees do cease and desist from:

1. Using or displaying upon circulars or advertising matter used in connection with the sale of watches and watch movements manufactured, dealt in or sold by them in interstate commerce, upon the cases containing said watch movements, or upon the boxes or packages containing said watches or watch movements, the words "Geneva Watch Company" or the word "Geneva," alone or in combination with other word or words, if in truth and fact the said watches and watch movements were not made in the city of Geneva, Switzerland, unless following such word or words and in type or lettering equally conspicuous with them, appear words in which the true place of manufacture, town or city and State, is stated.

2. Using or displaying upon circulars or advertising matter used by them in connection with the sale of watches or watch movements made, dealt in or sold by them in interstate commerce, upon the dials of said watches or watch movements, upon the cases containing said watch movements, or upon the boxes and containers thereof, the word or brand 'Genva" in association with the words "Geneva Watch Company" or in simulation of the word or brand "Geneva," if in

truth and fact such watches or watch movements were not made in the city of Geneva, Switzerland, unless such brand and words are followed by words in type or lettering equally conspicuous with them, in which the true place of manufacture, town or city and State, is stated.

It is further ordered, That the respondents, Lawrence L. Mayers and Chauncey M. Mayers, partners doing business under the firm name and style of Geneva Watch Company, shall within sixty (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.

FEDERAL TRADE COMMISSION
v.
B. RAFF & SONS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 973—October 10, 1923.

SYLLABUS.

Where a firm engaged in the sale to retail dealers of combs, toilet sets, etc., composed of "white pyroxylin" or "celluloid," in competition with concerns which correctly described and represented their products, in its catalogues described the same as "Parisian Ivory," "White Ivory," "Reed Ivory," etc., and thereby misled dealers and other purchasers into believing said articles to be made of ivory;

Held, That such false and misleading advertising under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that B. Raff and Sons, a partnership, composed of the following members, B. Raff, I. Raff, and M. Raff, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The respondents, B. Raff and Sons, a partnership composed of B. Raff, I. Raff, and M. Raff, against which partnership this complaint is brought and also against the said individuals composing said partnership, are located at 233 Fifth Avenue, New York City, and are engaged in a jobbing business handling jewelry, plated ware, toilet sets, etc. Respondents are not manufacturers but buy these articles from various manufacturers located in different parts of the country. Sales of these articles are made to retail dealers in all parts of the United States, partly through the personal efforts of the partners and the traveling salesmen employed, and partly by mail. To facilitate the sale of these articles respondents issue catalogues containing cuts and written descriptions of its merchandise. These catalogues are sent throughout the trade and are used by the retail dealers when ordering by mail. Respondents caused the articles sold by them to be transported from the City of New York to purchasers through and into various other states of the United States. In the course of business above referred to the respondents have been and now are in competition with other persons, partnerships and corporations engaged in the sale of such articles as are above set out.

PAR. 2. Among the other commodities bought and sold by respondents they buy and sell considerable quantities of combs, toilet sets, etc., made of white pyroxylin or "celluloid," as it is commonly known. These goods are purchased from several different manufacturers and are not branded. In offering these articles for sale respondents freely use in their catalogue the descriptive terms such as: "Parisian Ivory," "White Ivory," "Reed Ivory" and other similar expressions to designate the material of which these articles are manufactured, which articles are manufactured of white pyroxylin or "celluloid," and contain no ivory at all.

PAR. 3. The advertisements so published in said catalogue by said respondents, which catalogues are sent by mail to various dealers in such articles, and other prospective purchasers of such articles who are not dealers but who buy such articles for their own use throughout the various states of the United States, are misleading and cause such dealers and other persons who are not dealers to believe that such articles are manufactured of ivory when in truth and in fact such articles are manufactured entirely of pyroxylin, commonly known as "celluloid," which is a cheap substance of small value and worth very much less than ivory.

PAR. 4. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' 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.

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, B. Raff, I. Raff, and M. Raff, copartners doing business under the firm name and style of B. Raff & Sons, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance without filing an answer herein and an agreed statement as to the facts having been made and filed in which it is stipulated that the facts therein recited may be taken as the facts of this proceeding and in lieu of testimony, and upon such facts the Commission may proceed further 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 final hearing without oral argument, and the Commission, having duly considered the record and being fully advised in the premises makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, B. Raff & Sons, a partnership composed of B. Raff, I. Raff, and M. Raff, against which partnership this complaint is brought and also against the said individuals composing said partnership, are located at 233 Fifth Avenue, New York City, and are engaged in a jobbing business handling jewelry, plated ware, toilet sets, etc. Respondents are not manufacturers but buy these articles from various manufacturers located in different parts of the country. Sales of these articles are made to retail dealers in all parts of the United States, partly through the personal efforts of the partners and the traveling salesmen employed, and partly by mail. To facilitate the sale of these articles respondents issue catalogues containing cuts and written descriptions of its merchandise. These catalogues are sent throughout the trade and are used by the retail dealers when ordering by mail. Respondents caused the articles sold by them to be transported from the City of New York to purchasers through and into various other States of the United States. In the course of business above referred to the respondents have been and now are in competition with other persons, partnerships and corporations engaged in the sale of such articles as are above set out.

PAR. 2. Among the other commodities bought and sold by respondents they buy and sell considerable quantities of combs, toilet sets, etc., made of white pyroxylin or "celluloid," as it is commonly known. These goods are purchased from several different manufacturers and are not branded. In offering these articles for sale respondents freely use in their catalogue the descriptive terms such as: "Parisian Ivory," "White Ivory," "Reed Ivory," and other similar expressions to designate the material of which these articles are manufactured, which articles are manufactured of white pyroxylin or "celluloid," and contain no ivory at all.

PAR. 3. The advertisements so published in said catalogue by said respondents, which catalogues are sent by mail to various dealers in such articles, and other prospective purchasers of such articles who are not dealers but who buy such articles for their own use throughout the various States of the United States, are misleading and cause such dealers and other persons who are not dealers to believe that such articles are manufactured of ivory when in truth and in fact such articles are manufactured entirely of pyroxylin, commonly known as "celluloid," which is a cheap substance of small value and worth very much less than ivory.

PAR. 4. That among the competitors of the respondents there are and have been a considerable number who sell in interstate commerce articles mentioned in paragraph 2 hereof, manufactured from genuine ivory and there are also among such competitors a considerable number who sell and have sold in interstate commerce such articles manufactured from white pyroxylin or "celluloid," who do not brand, label, represent or advertise such articles as "Parisian Ivory," "White Ivory," "Reed Ivory," or by any other description indicating that said articles are manufactured from ivory.

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described 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 TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the agreed statement as to the facts made and filed herein, in lieu of the testimony and 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 respondents, B. Raff, I. Raff, and M. Raff, as partners and individually do cease and desist from directly or indirectly advertising or representing as "Ivory" articles offered for sale or sold by them, unless such articles are in fact made or composed of ivory.

FEDERAL TRADE COMMISSION
v.
CROFTS & REED COMPANY AND POLONIA SOAP COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 862—October 13, 1923.

SYLLABUS.

Where corporations engaged in the manufacture and sale of soaps used such names as "Medicinal Toilet", "Olive Bouquet", "Olive Casteel", "Peroxide", "Palm Cocoa", "Palmo", "Buttermilk", "Victory Palm", "Witch Hazel", etc. in branding said soaps and labeling the wrappers thereof and in describing the same in their catalogues, notwithstanding the fact that said soaps contained no medicament and little if any of the ingredients indicated; with the capacity and tendency thereby to mislead and deceive purchasers and prospective purchasers with reference to the composition and virtues of said soaps, and to induce the purchase thereof in preference to comparable products of competitors, not deceptively characterized:

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

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Crofts & Reed Company and the Polonia Soap Company, hereinafter referred to as the respondents, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions 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," and it appearing to the Commission that a proceeding by it in respect thereof would be of interest to the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That respondent, Crofts & Reed Company is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business in the City of Chicago in said State, and for more than one year last past has been and now is engaged in the manufacture and sale of soaps and toilet articles; that respondent, Polonia Soap Company, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business in said City and State and for more than one year last past has been and now is engaged in the manufacture and sale of soaps and toilet articles.

PAR. 2. That respondents and each of them manufacture soaps and toilet articles in said City of Chicago, Illinois and sell and deliver said products to purchasers including wholesale and retail dealers and house to house peddlers, resident at various points in various States of the United States, by sending the products so sold from their said place of business in the City of Chicago, State of Illinois, into and through various States of the United States to the purchasers of said products at their several places of residence; that in the course and conduct of their said businesses respondents and each of them continuously have been and now are in competition with other persons, firms and corporations engaged in the manufacture and sale of soaps and toilet articles.

PAR. 3. That respondent, Crofts & Reed Company, in the course of its said business sells and distributes in various States of the United States, in the manner hereinbefore set out, certain soaps which it calls and names "Olive Bouquet", "Olive Castillo", "Medicinal Toilet Soap", "Peroxide Soap", "Palm Coco", "Witchazel Soap", "Palmo" and "Buttermilk", respectively; that said respondent brands each cake of each said soap with its said name and wraps and packs the same in wrappers and boxes upon which respondent has, in each instance, caused said name to be printed and delivers said soaps so branded wrapped and packed to the hereinbefore mentioned purchasers thereof; that aforesaid names so branded upon and applied to said soaps, are false, misleading and deceptive, in that said "Olive Bouquet" soap contains no olive oil, said "Olive Castile" soap contains no olive oil; said "Medicinal Toilet Soap" contains no medicine and no drug, substance or agent of any curative or remedial value whatsoever; said "Peroxide Soap" contains no peroxide of hydrogen and no appreciable quantity of the peroxide of any other element or substance; said "Palm Coco" soap contains no palm oil, said "Palmo" soap contains no palm oil; said "Witchazel" soap contains no appreciable quantity of witchazel nor the extract thereof and said "Buttermilk" soap contains no buttermilk nor any derivative thereof; that there is a general belief amongst the public throughout the United States that soaps made of olive oil, palm oil or a combination of said oils are of better quality and milder than soaps made of animal fats and possess certain qualities beneficial and emollient to the human skin not possessed by soaps made of animal fats, that peroxide means peroxide of hydrogen, that such peroxide has substantial value as a germicide, a disinfectant and a bleach, that witchazel and buttermilk and their derivatives have each a curative emollient and beneficial effect upon the human skin and that soaps containing such substances or any of them have the same effect when applied to the skin as such substances have when alone so applied; that by reason of the premises, the aforesaid false branding by said respondent of the said soaps manufactured and sold by it as above set out, misleads and deceives the aforesaid purchasers thereof and the vendees and prospective vendees of such purchases into the belief that said soaps are made of and contain, respectively, the substances set out in or indicated by aforesaid names, whereby large number of persons, residing in various States of the United States, including aforesaid purchasers, are induced to and do purchase said soaps.

PAR. 4. That in connection with its aforesaid business and to further sales and induce purchases of its aforesaid falsely named and branded soaps, respondent, Crofts & Reed Company, has caused to be printed and sends out from its aforesaid place of business in the City of Chicago, State of Illinois, to large numbers of persons residing at various points in various States of the United States, including aforesaid purchasers, contain catalogs describing said soaps, detailing the virtues thereof and containing printed reproductions of the several cakes of said soaps bearing their respective names branded upon said cakes as hereinbefore set out; that said contents of said catalogs mislead and deceive the recipients thereof into the belief that said soaps are made of and contain, respectively, the substances appearing in or suggested by said names; that by reason of the premises and of the belief existing amongst the general public regarding the properties, virtues and value of aforesaid substances, as hereinbefore set out, large numbers of aforesaid persons are induced to and do purchase said soaps from said respondent and said respondent delivers the soaps so purchased by sending the same from its said place of business in the City of Chicago, State of Illinois into and through various States of the United States to said persons at their several places of residence.

PAR. 5. That in the sale of its said soaps, as hereinbefore set out respondent, Crofts & Reed Company, comes into direct competition with other persons, partnerships and corporations who manufacture soaps and who sell and distribute the same in interstate commerce and who do not name and brand the soaps made by them with false, misleading and deceptive names, and further, by means of its practices hereinbefore set out, said respondent enables and causes its dealer customers, referred to in paragraph 2 hereof, to directly compete, when reselling said respondent's said soaps, with dealers engaged in selling other soaps, including dealers engaged in selling the soaps of said other manufacturers.

PAR. 6. That about the first day of July, 1921, respondent Polonia Soap Company, acquired the entire capital stock of respondent Crofts & Reed Company and the ownership thereof; that ever since said acquisition respondent, Polonia Soap Company, has directed, controlled and conducted the entire business of respondent, Crofts & Reed Company, and has aided, abetted and participated in all the hereinbefore alleged acts and things done by said last named respondent and still so aids, abets and participates.

PAR. 7. That above alleged acts and things done by respondents and by each of them constitute an unfair method 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.

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, Crofts & Reed Company and Polonia Soap Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer, the testimony of witnesses was taken and evidence was received, both in support of the charges stated in the complaint and on behalf of respondents, before an examiner of the Federal Trade Commission theretofore duly appointed, whereupon the trial examiner made his report upon the facts with proposed findings as to the facts, to which counsel for respondents filed exceptions.

Thereupon the matter came on for final hearing before the Commission, upon the complaint, the answer thereto, the evidence adduced, the report of the trial examiner and exceptions thereto by respondents, briefs by counsel for the Commission and counsel for respondents, and was orally argued by counsel, 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 conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent Crofts & Reed Company is a corporation organized under and existing by virtue of the laws of the State of Illinois, having its principal office and place of business in the City of Chicago in said State, where for twenty years prior to 1921 it had been engaged in the manufacture of soap and toilet articles and their sale in the several states of the United States.

(*a*) Respondent Polonia Soap Company is a corporation organized under and existing by virtue of the laws of the State of Illinois, having its principal office and place of business in the City of Chicago in said State, where it has been engaged in the manufacture of soap and its sale in the several states of the United States.

(*b*) In 1920 respondent Polonia Soap Company contracted to purchase, and later did purchase, the stock of respondent Crofts & Reed Company, and through such purchase respondent Polonia Soap Company secured and exercised full control over the assets, plants and business of respondent Crofts & Reed Company and in 1921, and for some time subsequent thereto, operated and conducted said business under the trade name of Crofts & Reed Company.

(*c*) Respondent Polonia Soap Company, at the time of the purchase by it of respondent Crofts & Reed Company stock, had an authorized capital stock of $500,000. Said respondent Polonia Soap Company, through its attorney of record in open hearing in this proceeding, announced that it was turning its business over to Crofts & Reed Company and was winding up its affairs. Respondent Crofts & Reed Company, sometime prior to March 22, 1923, the date of the hearing in this proceeding, increased its capital stock to $600,000 which it is exchanging for the stock of respondent Polonia Soap Company, and respondent Crofts & Reed Company is now conducting, and through its attorney of record in open hearing in this proceeding has expressed the intention of hereafter conducting, in its own name, the business heretofore conducted at the times named herein by respondent Crofts & Reed Company and at the times mentioned herein by Polonia Soap Company.

PAR. 2. Respondents as above set forth have been and the respondent Crofts & Reed Company is now engaged in the manufacture of soaps and toilet articles in the City of Chicago, State of Illinois, and the sale and delivery of such products to purchasers in many of, if not all, the several states of the United States, and such products in the course of such sale and delivery are transported from respondents' place of business in said City of Chicago to, into and through the several states of the United States to purchasers in their several places of residence. In the course and conduct of their said business as hereinabove set forth, respondents have been and are in competition with other persons, partnerships, firms, and corporations in the manufacture and sale of soaps and toilet articles.

(*a*) Prior to November 1, 1922, respondents, in the course of said business as hereinabove set forth, sold their products to purchasers who were dealers at wholesale and to other purchasers who were dealers at retail, and also to house-to-house peddlers. Said sales to said peddlers were made by the so-called mail order method, including the advertising of the products and the mailing out of catalogues, the receiving by respondents of orders by mail and the shipping out of said products to said peddlers who in turn sold said products by house-to-house canvass or by such other methods as such peddlers employ. About November 1, 1922, said respondents sold said mail order branch of their business to Western Products Company of Chicago, a sales agency. Respondents, through their attorney of record in open hearing in this proceeding, have announced their intention of issuing no catalogues hereafter, nor selling hereafter to purchasers other than wholesale or retail dealers, giving as reasons for such determination the fact that dealers would not purchase the products of respondent while they sold by the mail order method, and that respondents have contracted with such dealers not to sell by such methods hereafter.

PAR. 3. Respondents, in the course of their said business as hereinabove set forth, sell and distribute in many of, if not all, the several states of the United States soaps which they designate as "Olive Bouquet", "Olive Castile", "Medicinal Toilet Soap", "Peroxide Soap", "Palm Cocoa", "Witch Hazel Soap", "Palmo" and "Buttermilk Soap", respectively. Each cake of such soap and each wrapper and each carton containing such soaps are branded with the brand name of the soap involved.

(*a*) Said soap designated by respondents as "Olive Bouquet Toilet Soap" and described in their catalogue as "A pure vegetable oil soap" contains 5 to 10 per cent of olive oil, the bulk of its fatty ingredients being cocoanut oil and tallow. It is not a pure vegetable oil soap.

(*b*) Said soap designated by respondents as "Olive Castile" contains from 5 to 10 per cent olive oil, the bulk of the fats used in the manufacture of said soap being cocoanut oil and tallow. It is not an olive castile soap. The olive oil used in the making of "Olive Bouquet" and "Olive Castile" soaps is not tested for purity, is of low grade and may be impure, containing cottonseed oil, so that the actual olive oil content in these soaps may be less than 5 per cent.

(*c*) Said soap designated by respondents as "Medicinal Toilet Soap" contains no medicament. Its manufacture by respondents was discontinued about one year prior to the date of the hearing in this proceeding, March 22, 1923.

(*d*) Said soap designated by respondents as "Peroxide Soap" contains no peroxide. Peroxide of hydrogen in small quantities is placed in the soap at the time of manufacture but, as is well known to respondents, it disintegrates leaving in the soap no medicinal ingredient.

(*e*) Said soap designated by respondents as "Witch Hazel Soap" contains no witch hazel when placed upon the market, the alcohol, an essential element of the small amount of witch hazel placed in the soap at the time of manufacture, having evaporated and disappeared.

(*f*) Said soap designated by respondents as "Buttermilk Soap" contains no buttermilk when ready for market, although a small amount of buttermilk powder or powdered buttermilk is placed therein at the time of manufacture.

(*g*) Said soap formerly designated by respondents as "Palm Cocoa" and now designated by them as "Victory Palm", had for its fatty acid content five per cent palm oil, fifteen per cent cocoanut oil, and the balance tallow.

PAR. 4. The use by respondents as set forth in paragraph 3 hereof of the term "Olive Bouquet Toilet Soap" in connection with the catalogue statement "A Pure vegetable oil soap", has the tendency and capacity to mislead and deceive purchasers of said soap in the belief that its fatty ingredient was olive oil only and such belief may be an inducement to the purchase of said soap.

(*a*) The use of the term "Olive Castile" as set forth in paragraph 3 hereof, applied to soap containing fatty ingredients other than olive oil, has the tendency and capacity to mislead and deceive purchasers of said soap into the belief that its fatty ingredient was olive oil only and such belief may be an inducement to the purchase of said soap.

(*b*) The use of the term "Medicinal Toilet Soap" as set forth in paragraph 3 hereof, has the capacity and tendency to mislead and deceive purchasers into the belief that such soap has medicinal qualities which would add to the value of said soap.

(*c*) The use by the respondents of the terms "Peroxide Soap," "Witch Hazel Soap" and "Buttermilk Soap" has the capacity and tendency to mislead and deceive purchasers into the belief that said soaps actually contain the respective ingredients thus named or indicated and that such ingredients, because of qualities healing or soothing to the skin, would add to the value of said soaps.

(*d*) The use by respondents of the term "Palm Cocoa" or any combination of words which included the word "palm" or the word "cocoa" as a brand name for soap, has the capacity and tendency to mislead purchasers into the belief that the fatty acid content of such soap is entirely composed of the oil or oils indicated by such brand name.

PAR. 5. Purchasers of soaps, especially women, consider soaps containing olive oil as their fatty ingredient to be more desirable for toilet use than soaps made from animal fat, so that the use of the term "Olive" tends to aid in the sale of such soap. Olive oil is far more expensive than the animal fats used in soap making.

PAR. 6. Prior to November 1, 1923, respondents, as an inducement in the sale of their said soaps, printed and circulated in the several states of the United States catalogues listing their soaps designated and described as hereinabove set forth, with cuts of the bars of said soaps and their wrappers and containers. Such circulars listed, described, and advertised "Olive Bouquet," "Olive Castile," "Medicinal Toilet," "Peroxide," "Witch Hazel" and like brands of soaps sold by respondents, to an extent, had the capacity and tendency to mislead and deceive purchasers and prospective purchasers into the belief that said soaps so listed had the virtues implied or suggested by the names under which such soaps were listed, thus tending to induce persons to purchase such soaps rather than soaps of other manufacturers, of like quality not thus deceptively listed, designated or advertised.

CONCLUSION.

That the practice of the respondents as set forth in the foregoing findings as to the facts are in the circumstances therein set forth, 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 answer of the respondents, the testimony and the evidence, the trial examiner's report upon the facts and the exceptions thereto, and upon the briefs and argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of 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 respondents, Crofts & Reed Company, and Polonia Soap Company, their officers, directors, representatives, agents and employes cease and desist,

(1) From employing or using as labels or brands on soap sold by them, the fatty ingredient of which is not composed entirely of olive oil, or on the wrappers and containers in which such soap is delivered to customers, the word "Olive" alone or in combination with any other word or words, unless accompanied by a word or words designating the constituent elements other than olive oil constituting in part the fatty ingredient of the soap (e. g., "Olive Oil, Cocoanut Oil and Tallow Base"; "Olive Oil and Tallow Base") or by a word or words otherwise clearly indicating that the fatty ingredient of such soap does not consist entirely of olive oil (e. g., "5 per cent Olive Oil Base").

(2) From employing or using as labels or brands on soap sold by them, which contains no medicament, or on the wrappers or containers in which such soap is delivered to customers the word "Medicinal" alone or in combination with any other word or words.

(3) From employing or using as labels or brands on soap sold by them, or on the wrappers or containers in which such soap is delivered to customers, the word "Peroxide," "Buttermilk," or "Witch-Hazel," either alone or in combination with another word or words, which soap when purchased by the consumer in the usual and regular course of commerce, contains none of the ingredient or ingredients indicated by such labels or brand names.

(4) From employing or using as labels or brands on soap sold by them, the fatty ingredient of which is not composed entirely of palm oil or on the wrappers or containers in which such soap is delivered to customers, the word "Palm," either alone or in combination with any other word or words unless accompanied by a word or words designating the material other than palm oil, constituting in part the fatty ingredient of the soap (e. g., "Palm Oil, Cocoanut Oil and Tallow Base"; "Palm Oil and Tallow Base") or by a word or words otherwise clearly indicating that the fatty ingredient of the soap does not consist entirely of palm oil (e. g., "5 per cent Palm Oil Base").

It is further ordered, That the respondents shall file with the Federal Trade Commission, within ninety days from the date of this order, their report in writing, stating the manner and form in which this order has been conformed to and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondents in connection with the sale of their product in interstate commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

OCCIDENTAL OIL CORPORATION ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 931—October 19, 1923.

SYLLABUS.

Where a corporation organized for the ostensible purpose of drilling oil wells on leased lands, and certain individuals, its organizers, in promoting the sale of its stock, represented to stockholders, purchasers, and prospective purchasers that production of oil from said corporation's wells warranted dividends of 10% a month and that disbursements then being made were such dividends; the fact being that no profits or earnings properly applicable to dividends, or any other purpose, accrued to said corporation from such wells, which were operated at a loss and finally relinquished to the original lessor, and such so-called dividends were furnished by one of said individuals out of his personal funds or from funds secured from the sale of his personal stock; with the result that the public was thereby deceived and misled and induced to purchase said stock at a premium in excess of its par value:

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

COMPLAINT.

Acting in the public interest 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 charges that the Occidental Oil Corporation, T. Frank Smith, W. R. Charles and L. J. Robling, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. The Occidental Oil Corporation is a corporation organized under the laws of the State of Delaware in May, 1920, with a capitalization of $500,000.00, divided into 10,000 shares having a par value of $50.00 each by respondents, T. Frank Smith, W. R. Charles and L. J. Robling, for the purpose of drilling and developing oil wells in the State of Texas, and the said respondent, T. Frank Smith, was elected President, the said respondent, W. R. Charles, Vice-President, and the said respondent, L. J. Robling, Secretary and Treasurer, at the first meeting of the board of directors of said corporation. The principal office of said respondent corporation is in the city of Washington, District of Columbia, and its field office is located at Mexia, Texas.

PAR. 2. Ever since the organization of said respondent corporation, the respondents, T. Frank Smith, W. R. Charles and L. J. Robling, have been and are now engaged in soliciting orders for and selling shares of the said respondent corporation, and in the course of such solicitation said respondents have made and still make use of statements contained in letters, circulars, maps and other literature setting forth information and representations concerning the oil leases, properties, assets and prospects of said corporation, which said respondents send from the city of Washington, District of Columbia, to numerous prospective purchasers at their several places of residence in the various States of the United States and which statements and assertions are made by said respondents, T. Frank Smith, W. R. Charles and L. J. Robling, directly to prospective purchasers of said shares of stock in the District of Columbia and elsewhere throughout the several States of the United States. Upon receiving orders for aforesaid shares of stock in respondent corporation as a result of such solicitation, said respondents fill or otherwise furnish the same by sending certificates for said shares of stock so purchased from the said city of Washington, District of Columbia, to the purchasers thereof at their several places of residence in the District of Columbia and in the various States of the United States.

PAR. 3. The statements, assertions and representations made by the said respondents, T. Frank Smith, W. R. Charles and L. J. Robling are contained in the aforesaid letters, circulars, maps and other literature used in soliciting as above set forth contain numerous false and misleading assertions concerning the properties, assets, oil production and prospects of said corporation, amongst which are assertions to the effect that the purchasers of shares of stock in said corporation will receive dividends of ten per cent per month until all the initial payment for the stock has been paid; that the corporation owns producing wells or interests therein and is producing oil in sufficient quantities and thus making sufficient earnings to cover the payment of said ten per cent dividend out of earnings; and that the corporation is drilling for oil amidst wells producing great quantities of oil and is shortly to start drilling wells in such territory; and that the existing earnings from producing wells and the exceptionally good prospects of finding large quantities of oil in the near future through drilling operations assure an income to the owners of such shares of stock; whereas, in truth and in fact, the corporation did not own producing wells or have interests in producing wells which produced oil in sufficient quantities to meet the expenses of production, and is not now making any net earnings whatsoever, and the only monies out of which the corporation ever could or can now pay dividends on its said shares of stock were and are monies derived from the sales of such shares of stock, and the leases owned by respondent were not located in what was known as proven territory. The aforesaid false and misleading assertions and representations have the capacity and tendency to mislead and deceive the public into the belief that the purchase of the aforesaid shares of stock is a safe and profitable investment; that a return of ten per cent monthly would be realized by the stockholders; that the corporation owned producing oil wells or interests therein from which it derived profits and earnings more than sufficient to pay, and out of which are and will be paid the said ten per cent monthly dividend upon all the said shares of stock sold and to be sold, and sufficient to provide further dividends on such shares; and that the corporation is now drilling and intends in the near future to commence drilling oil wells in territory under conditions which practically assure the additional production of large quantities of oil and consequently the payment of large additional profits and dividends to the holders of said shares of stock.

PAR. 4. When marketing the shares of capital stock of respondent corporation, the respondents and each of them are in competition with other persons, partnerships and corporation in marketing the capital stock and shares of beneficial interest of oil companies and enterprises engaged in interstate commerce.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' 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.

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, the Occidental Oil Corporation, a corporation, T. Frank Smith, President, W. R. Charles, Vice-President, and L. J. Robling, Secretary and Treasurer, individually and as officers of the Occidental Oil Corporation, charging them with unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance herein by their attorneys, Etheridge, McCormick and Bromberg of Dallas, Texas, and filed answer, hearing was had and evidence introduced before an examiner of the Commission theretofore duly appointed, in support of the complaint and on behalf of respondents. Thereafter and on May 2, 1923, the examiner duly filed his report upon the facts.

And thereupon this proceeding came on for final hearing and counsel for the Commission and for the respondents, having submitted briefs, and argument of counsel for the Commission having been heard, counsel for respondents having failed to appear for oral argument, though duly notified of the time and place designated therefor, and the Commission having duly considered the record and being now fully advised in the premises, and being of the opinion that the methods of competition in question are prohibited by said act, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Occidental Oil Corporation, was incorporated May 27, 1920, by respondents, T. Frank Smith, W. R. Charles, and L. J. Robling, and ever since has been and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with a capitalization of $500,000.00, represented by 10,000 shares each of par value of $50. Its purpose was represented to be drilling oil wells on various leases owned by the respondent corporation in the State of Texas. The principal office of the company was located in the City of Washington, in the District of Columbia, until some time in September 1921, when it was removed to Mexia, in the State of Texas.

PAR. 2. Immediately after the organization of the respondent, Occidental Oil Corporation, respondents T. Frank Smith, W. R. Charles, and L. J. Robling, individually and in conjunction with each other, but at all times under the control and direction of respondent, T. Frank Smith, commenced an active campaign to sell shares of stock in the company. As an inducement to invest therein, they, and each of them, represented personally and by agents, to purchasers and to prospective purchasers of stock that their money would be refunded to them out of the first proceeds from the production of oil. By means of this representation the respondents sold, and delivered the certificates thereof, by mail and otherwise, from its office in Washington in the District of Columbia, about 600 shares of 2,000 shares theretofore set apart as treasury stock, to persons residing in the District of Columbia, Virginia and New York. Some time late in August or early in September 1920, certain wells in Wichita County, Texas, in which the respondent, Occidental Oil Corporation, owned a partial interest, began to produce oil in small quantities. Thereupon, under direction of the individual respondents, it returned to its shareholders the money theretofore invested by them in the stock, approximately $30,000.00, with the false representation that the money so returned was a dividend derived from production of oil out of the wells of the Occidental Oil Corporation, and that such production was sufficient to support monthly dividends thereafter at the rate of 10 per cent. During the period following this action, running from September, 1920, to May, 1921, respondent Occidental Oil Corporation, actually distributed among its shareholders six so-called dividends, each at the rate of ten per cent per month, amounting in the aggregate to $114,101.00. These payments were each and all falsely represented as proceeds from the production of oil by the company. In the meantime, while these so-called dividends were in process of distribution, increased efforts were made by respondents to dispose of the stock of respondent corporation and as a basis for their selling activities respondent called attention of all purchasers and prospective purchasers to the falsely so-called earnings and dividends of the company.

PAR. 3. The representations that the money returned to shareholders on account of their original investment was derived from the production of oil; that such production was sufficient for monthly dividends of ten per cent, and that six so-called dividends during the period when respondents were engaged in vigorous efforts to sell the stock of the Occidental Oil Corporation, were supplied from the production of oil were each and all false and had the capacity to mislead and deceive and they, and each of them, did mislead and deceive the public, or that portion thereof which purchased stock of the Occidental Oil Corporation, into the belief that it owned producing oil wells, the earnings of which had supplied the funds for the successive so-called dividends. By means of these representations, the respondents sold the remaining 1,400 shares of treasury stock and 400 shares of the individual stock of respondent, T. Frank Smith, which were sold by the Occidental Oil Corporation on its own account and as treasury stock. The 2,000 shares of treasury stock sold by respondents returned to the company a premium of $72,750.00 above par, or in the aggregate $172,750.00. The 400 shares of individual stock of T. Frank Smith sold by the company as treasury stock and on its own account realized double par, or $40,000.00.

In truth and in fact the gross amount of money which the Occidental Oil Corporation received from production of its wells during the period when said so-called dividends were being distributed among stockholders of the respondent company and its stock offered for sale and sold to the public, or from any other source than the sale of its capital stock, was the sum of $7,852.19. No profits or earnings of any kind, applicable to dividends or to any other purpose, accrued to the Occidental Oil Corporation from the oil wells which were so represented as the basis and source of each and all of its so-called dividends. On the contrary, from the commencement of their production to the final relinquishment of the wells to the original lessor by respondent corporation, the wells were operated at a loss, which loss itself exceeded the amount of money disbursed as dividends by the company. The money, approximately $30,000 returned to shareholders, as well as the money applied to the successive dividends which followed, was furnished by respondent T. Frank Smith out of his own personal funds or from the sale of his individual stock in respondent, Occidental Oil Corporation.

CONCLUSION.

That the practices of respondent, Occidental Oil Corporation, T. Frank Smith, W. R. Charles and L. J. Robling, under the conditions and circumstances described in the foregoing findings of fact, 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 upon the complaint of the Commission, the answer of respondents, testimony and evidence, and argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondents, Occidental Oil Corporation, T. Frank Smith, W. R. Charles and L. J. Robling 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 respondent Occidental Oil Corporation, T. Frank Smith, W. R. Charles, and L. J. Robling, and their agents, do cease and desist from directly or indirectly making any false or misleading statements or representation concerning the resources, operations, production, profits, earnings, disbursements, dividends, progress, or prospects of the respondent Occidental Oil Corporation, or of any other corporation, association, or partnership, in connection with the sale or offering for sale in interstate commerce of the stock or other security of the respondent Occidental Oil Corporation, or of any other corporation, association or partnerships.

It is further ordered, That said respondents Occidental Oil Corporation, T. Frank Smith, W. R. Charles, and L. J. Robling, shall within forty (40) days from the date of service of this order file with the Commission a report setting forth in detail the manner and form in which they have complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION

v.

MAX BAER AND A. BAER, PARTNERS DOING BUSINESS UNDER THE NAME AND STYLE OF BAER BROTHERS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATIONS OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1055—October 19, 1923.

SYLLABUS.

Where a firm engaged in the manufacture and sale of a product not composed wholly of genuine shellac gum dissolved in alcohol, in competition with concerns which correctly labeled, advertised and represented their products in respect of composition, labeled, advertised and sold the same under the name "Mongol Shellac" as genuine shellac; with the effect of deceiving a substantial part of the purchasing public with reference to the composition thereof and with the capacity and tendency thereby to induce its purchase:

Held, That such misbranding, and false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that Max Baer and A. Baer, partners, doing business under the name and style Baer Brothers, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Baer Brothers, and are engaged in the manufacture of paints, varnishes and allied products and the sale thereof to wholesale and retail dealers throughout the United States. They own and operate a factory for the manufacture of said products in the City of Stamford in the State of Connecticut, and a depot for the storage and shipment of said products in the City and State of New York. They ship their products from said factory to said depot and thereafter upon making sales to dealers in various States of the United States they cause said products to be transported from said depot in the City and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business the respondents are in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paints, varnishes and allied products in interstate commerce.

PAR. 2. Shellac or shellac varnish, as commercially known, is a product composed solely of genuine shellac gum dissolved in alcohol, and is so understood by jobbers, dealers and the purchasing public.

PAR. 3. The respondents, in the course and conduct of their said business, manufacture and sell, and for more than one year last past have manufactured and sold to jobbers, dealers and the purchasing public, in commerce as aforesaid, throughout the States of the United States by means of traveling salesmen, advertisements and otherwise, a product not composed wholly of genuine shellac gum dissolved in alcohol, which product the respondents represent to the purchasers thereof to be pure shellac or shellac varnish, and which product and the containers thereof they label, brand and advertise as "Mongol Shellac" without indicating in any way whatever on such labels, brands and advertisements that such product contains any other gum, ingredient or substitute for gum, than genuine shellac gum. The said representations concerning said product and the labels, brands and advertisements upon the containers thereof are false and misleading and have the capacity and tendency to mislead and deceive the purchasers thereof, the trade and purchasing public, into the belief that such product so represented, labeled, branded and advertised by respondents, is composed wholly of genuine shellac gum dissolved in alcohol and to induce said purchasers to purchase same in that belief.

PAR. 4. A large number of respondents' competitors referred to in paragraph 1 hereof sell and distribute throughout the United States shellac varnishes represented, advertised, branded and labelled as such, which said varnishes are composed of shellac gum dissolved in alcohol and contain no other gum or rosin.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and respondents' 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.

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, Max Baer and A. Baer, copartners, doing business under the name and style of Baer Brothers, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answers and entered their appearances herein, and made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case, and in lieu of testimony, and proceed forthwith to make its findings as to the facts, and such order as it may deem proper to enter therein without the introduction of testimony, or the presentation of argument in support of same, and the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondents are partners doing business under the trade name and style of Baer Brothers and are engaged in the manufacture of paints, varnishes and allied products and the sale thereof to wholesale and retail dealers throughout the United States. They own and operate a factory for the manufacture of said products in the city of Stamford, in the State of Connecticut, and a depot for the storage and shipment of said products in the city and State of New York. They ship their products from said factory to said depot and thereafter upon making sales to dealers in various States of the United States they cause said products to be transported from said depot in the city and State of New York into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of their said business the respondents are in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of paints, varnishes and allied products in interstate commerce.

PAR. 2. Shellac or shellac varnish, as commercially known, is a product composed solely of genuine shellac gum dissolved in alcohol, and is so understood by jobbers, dealers and the purchasing public.

PAR. 3. The respondents, in the course and conduct of their said business, manufacture and sell, and for more than one year last past have manufactured and sold to jobbers, dealers and the purchasing public, in commerce as aforesaid, throughout the States of the United States by means of traveling salesmen, advertisements and otherwise, a product not composed wholly of genuine shellac gum dissolved in alcohol, which product the respondents represent to the purchasers thereof to be pure shellac or shellac varnish, and which product and the containers thereof, they label, brand and advertise as "Mongol Shellac" without indicating in any way whatever on such labels, brands and advertisements that such product contains any other gum, ingredient or substitute for gum, than genuine shellac gum, copies of which labels are hereto annexed and made a part hereof.

PAR. 4. A large number of respondent's competitors referred to in paragraph 1 hereof sell and distribute throughout the United States shellac varnishes represented, advertised, branded and labelled as such, which said varnishes are composed of shellac gum dissolved in alcohol and contain no other gum or rosin.

PAR. 5. That the brands, labels and advertisements containing the words "Mongol Shellac" used by the respondents upon the containers of the product manufactured, sold and shipped by them as set forth in the foregoing findings are false, and have the capacity and tendency to, and do, mislead and deceive a substantial part of the purchasing public into the belief that such product, so labeled, branded and advertised by the respondents is composed solely of genuine shellac gum dissolved in alcohol, and to induce said purchasers to purchase same in that way.

CONCLUSION.

The practices of the 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 answers of the respondents, and the statement of facts agreed upon by the respondents and counsel for the Commission, and the Commission having made its findings as to the facts, with its conclusion that the 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, Max Baer and A. Baer, copartners doing business under the name and style of Baer Brothers, and each of them, their agents, representatives, servants and employees, cease and desist:

(1) From directly or indirectly employing or using on labels or as brands for varnish not composed wholly, one hundred per cent, of shellac gum cut in alcohol, or on the containers in which the varnish is delivered to customers, the words "Mongol Shellac" or the word "Shellac" alone or in combination with any word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient or gum of which the varnish is composed with the percentages of all such substances, ingredients or gums therein used clearly stated upon the label, brand or upon the containers (e. g., "Shellac substitute," or "Imitation Shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

(2) From using or displaying in circulars or advertising matter used in connection with the sale of its products in interstate commerce, except when such products contain one hundred per cent shellac gum cut in alcohol, the words "Mongol Shellac" or the word "Shellac" alone or in combination with any other word or words unless accompanied by a word or words clearly and distinctly setting forth the substance, ingredient or gum of which the varnish is composed with the percentages of all such substances, ingredients or gums therein used clearly stated (e. g., "Shellac substitute," or "Imitation Shellac," to be followed by a statement setting forth the percentages of ingredients or gums therein used).

It is further ordered, That the respondent shall file with the Federal Trade Commission, within sixty days from the date of this order, its report in writing, stating the manner and form in which this order has been conformed to and shall attach to such report two copies of all circulars, advertisements, devices or labels distributed or displayed to the public by the respondent in connection with the sale of its product in interstate commerce subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

J. D. SMILEY, DOING BUSINESS UNDER THE NAME AND STYLE OF DIXIE TAILORS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1059—October 23, 1923.

SYLLABUS.

Where an individual conducting a tailoring business, in soliciting customers on the installment plan falsely represented that customers would be organized into groups of forty-eight members each, the name of one of whom would be selected by chance, or in consideration of services rendered in the way of securing new customers or otherwise, each week, to receive a suit without further payment or obligation; the fact being that selections were made arbitrarily and not as a reward for services rendered, were made from customers as a whole without any such grouping as represented, and were far fewer in number than called for by the plan so held out; with the result that large numbers of customers were thereby secured:

Held, That the holding out of such false inducements to purchase, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest, 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 charges that J. D. Smiley, doing business under the trade name and style of "Dixie Tailors," hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is an individual owning and conducting a men's tailoring establishment under the name and style "Dixie Tailors," in the Westory Building, City of Washington, in the District of Columbia. Respondent is engaged in the business of selling men's clothing to residents of the said District in competition with other individuals, partnerships and corporations similarly engaged in said District.

PAR. 2. For more than a year last past, in the conduct of his said business, respondent has solicited customers among the residents of said district, by means of certain agents employed by respondent for that purpose and by him denominated solicitors. By and through said agents respondent has offered and does offer to make and sell to each customer, for the sum of $48.00, a suit of clothing from cloth chosen by the customer, to be paid for by such customer in 48 weekly payments of $1.00 each, payable in advance, upon the following terms, conditions and representations: That upon the completion of said 48 weekly payments, or when said total sum of $48.00 has been so paid, respondent will make or cause to be made, and will deliver to such customer, the suit so chosen by him as above set out; that the customers so secured by respondent are to be grouped by him into clubs of forty-eight members each, and that as to each such club, upon the initial payment of one dollar ($1.00) by each customer, respondent will select the name of one customer to whom the suit of clothing chosen by such customer under the agreement above set out will be made and delivered without further charge or payment other than the payments made by such customer under the advance payment plan above set out prior and up to the time of his said selection, and that each week thereafter, for a period of 47 weeks, respondent will similarly select and deliver a suit to one of the remaining customers in each such club until all have secured suits; that such customer will be selected by respondent in consideration of and in return for services theretofore rendered by such customer to respondent, which said services respondent represents to be the securing by such customer of other customers for respondent, or the doing of such other things as may be requested by respondent or by him considered sufficient to justify such selection. In some instances said agents have represented that said weekly selections are made by lot or chance. By means of such offer, respondent has, in the past, secured, and still secures, a large number of customers in the District of Columbia, each of whom agrees to purchase a suit upon the terms and conditions above set out, and from time to time respondent has arbitrarily, and not as a reward for any service rendered, selected the name of a customer to whom respondent has delivered a suit of clothing free of any further charge or payment other than the payments made by such customer under the advance payment plan above set out prior and up to the time of his said selection. Respondent has not divided said customers into groups or clubs of 48 members each, or in any other denomination, and has not made a weekly selection from each such group, in fulfillment of the representations hereinbefore set out; but on the contrary, has made random selections from time to time from among all the customers, and said actual selections have been and are many less in number than the number provided for by said representations, all with the result that said customers have not had an equal chance to be selected as above set out, and the majority of said customers have paid and still pay the entire, or substantially entire, amount of $48.00 for the suits purchased by them under the weekly payment plan hereinbefore set out.

PAR. 3. The above alleged acts and things done by respondent are all to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition 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.

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 complaint upon the respondent herein, J. D. Smiley, doing business under the name and style of the Dixie Tailors, charging him with the use of unfair methods of competition in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer and a stipulation of facts having been agreed upon by and between W. H. Fuller, Chief Counsel for the Federal Trade Commission, and counsel for the respondent, thereupon this proceeding came on for final hearing before the Commission, and the Commission having fully considered the record, 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, J. D. Smiley, doing business under the name and style of Dixie Tailors, is an individual, owning and conducting a tailoring establishment and operating same under the name and style set out above, in the City of Washington, District of Columbia. In the course and conduct of his business respondent is in competition with other partnerships, corporations and individuals similarly engaged.

PAR. 2. For more than one year last past, in the course and conduct of his said business, respondent has solicited customers among the residents of the District of Columbia by means of certain agents employed by him for that purpose and by him denominated as solicitors. By and through said agents respondent has offered and does offer to make and sell to each customer for the sum of $48 a suit of clothing from cloth chosen by the customer, to be paid for by such customer in forty-eight weekly payments of $1 each, payable in advance, upon the following terms, conditions and representations: That upon completion of the said forty-eight weekly payments or when said total sum of $48 has been paid, respondent will make or cause to be made, and will deliver to such customer the suit so selected by him as set out above; that the suctomers secured by respondent are to be grouped by him into groups of forty-eight members, and that as to each such club, upon the initial payment of $1 by each customer, respondent will select the name of one customer for whom the suit of clothing chosen by such customer under the agreement above set out will be made and delivered without further charge or payment other than the payments made by such customer under the advance payment plan above set out, prior and up to the time of its said selection, and that each week thereafter for a period of forty-seven weeks, respondent will similarly select and deliver a suit to one of the remaining customers in such club until all have secured suits. The customer will be selected by respondent in consideration of and return for services theretofore rendered by such customer to respondent, which said services [it] represents to be the securing by such customer of other customers for respondent, or the doing of such things as may be requested by respondent, or by him considered sufficient to justify such selection. In some instances the agents or respondent have represented to prospective customers that said selections were made by lot or chance. By means of such offer respondent has in the past secured a large number of customers in the District of Columbia, each of whom agreed to purchase a suit upon the terms and conditions above set out, and from time to time respondent has arbitrarily, and not as a reward for any services rendered, selected the name of a customer to whom it has delivered a suit of clothing free of any other charge or payment other than terms made by such customers under the advance payment plan as set out above. Prior and up to the time of the said selection respondent has not divided said customers into groups of clubs of forty-eight members each, or in any other denomination, and has not made weekly selections from each group in fulfillment of such representations hereinbefore set out; but, on the contrary, has made weekly selections from among all the customers and said actual selections have been and are many less in number than the number provided for by the said representation, with the result that said customers have not the chance represented to be selected as above set out, and the majority of such customers have paid the entire, or substantially the entire amount of $48 for the suits purchased by them under the weekly payment plan heretofore set out.

CONCLUSION.

The practices of said respondent, as set forth in the findings as to the facts 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 herein and the stipulation of facts heretofore filed, 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, J. D. Smiley, doing business under the name and style of Dixie Tailors, his agents, solicitors, representatives, servants, and employees do cease and desist from directly or indirectly:

(1) Falsely representing through his agents or by or through any other means whatsoever, to his customers or prospective customers, his method of marketing his merchandise in commerce, and especially from—

(2) Falsely representing through his agents or by or through any other means whatsoever to his prospective customers that in the sale of suits of clothing customers would be divided into clubs or groups of forty-eight persons each, and that from such clubs or groups each week the name of a person would be drawn or otherwise selected by choice to receive a suit of clothing without further charge or payment—

(3) From representing to customers or prospective customers that under respondent's plan of marketing his merchandise each and every customer would have an equal chance or opportunity with other customers in a selection and designation for those who were to receive a suit of clothing at a price under the full payment of $48, when in truth and in fact no equal chance or opportunity is given.

It is further ordered, That respondent within 60 days after the service upon it 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 heretofore set forth.

FEDERAL TRADE COMMISSION

v.

V. VIVAUDOU, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 892—October 30, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of toilet preparations, in pursuance of a plan for the maintenance of resale prices on its products; in cooperation with its retailer and jobber customers

(*a*) Made it generally known to the trade that it expected and required its vendees to maintain and enforce the resale prices, which it suggested;

(*b*) Solicited and secured from its vendees names of price cutters, and urged and sought to secure by coercion the observance by them of such prices;

(*c*) Threatened to, and did, refuse to sell to price-cutters;

(*d*) Exacted promises and assurances from offenders as a condition of further supplying them with its products;

(*e*) Promised dealers who reported names of price-cutters, that it would no longer supply them;

(*f*) Listed the names of price-cutters as dealers who would not be supplied pending the giving of satisfactory assurances of future observance of desired prices and delayed and held up their orders;

(*g*) Entered into and attempted to enter into informal arrangements with dealers for the maintenance by them of the desired resale prices, as a condition of opening accounts, and/or of continuing to fill orders;

With the result that those who would not so cooperate were prevented from securing its products at less than at standard uniform prices, which were substantially maintained, and with the capacity and tendency to constrain all dealers handling its products to sell the same uniformly at resale prices fixed by it, to prevent such dealers from securing the same at such lower prices as they might deem adequate or warranted by their respective selling costs and efficiency, and thereby to hinder and suppress all competition in the wholesaling and retailing thereof:

Held, That such a system of resale price maintenance, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that V. Vivaudou, Incorporated, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Delaware with its main office and principal place of business in the City of New York, State of New York. Respondent at all times hereinafter mentioned has been and still is engaged in the manufacture of toilet articles and the sale thereof to wholesale and retail dealers throughout the United States. It causes its said products when so sold to be transported from its said place of business in the City of New York to said purchasers at points in various States of the United States. In the course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of toilet articles in interstate commerce, and with the trade generally.

PAR. 2. In the year 1921 respondent fixed certain specified standard prices at which its said products should be resold by the purchasers thereof including jobbers, wholesalers and retailers, and adopted and employed and still employs a system for the maintenance and enforcement of said resale prices wherein respondent secured and still secures the co-operation of aforesaid dealer-customers and other persons in the course whereof respondent has employed and still employs the following means, amongst others, by which it and those cooperating with it, as above set out, undertake to prevent other persons obtaining respondent's products at less than said standard uniform resale prices:

(*a*) Makes it generally known to the trade by letters, personal interviews and by other means that it expects and requires said vendees to maintain and enforce said resale prices;

(*b*) Solicits and secures from said vendees reports of the names of dealers who fail to observe and maintain said resale prices, and upon obtaining such reports urges the offenders to cease selling below said prices, and seeks to coerce said offenders into maintaining said resale prices by methods of intimidation and coercion as hereinafter set out;

(*c*) Threatens to refuse to sell and does refuse to sell its products to dealers who fail to observe and maintain said resale prices or who sell to others who fail to maintain same;

(*d*) Exacts promises and assurances from said offenders that they will thereafter maintain said resale prices as a condition of further supplying them with its said products;

(*e*) Causes the names of such offenders or purported offenders to be enrolled on lists which it keeps for that purpose as purchasers who are not to be supplied with its products until they give assurances or otherwise satisfy respondent that in the future they will maintain the same, and takes various measures to prevent all dealers thus enrolled from obtaining further shipments of its products until it has received such assurances or satisfaction;

(*f*) Enters and attempts to enter into informal arrangements, agreements and undertakings with dealers including said offenders for the maintenance by them of said resale prices as a condition of opening accounts with said dealers or of continuing to fill their orders for its products;

(*g*) Urges dealers to enter into agreements amongst themselves to maintain said resale prices;

(*h*) Seeks information concerning, and applies coercion as set out in the foregoing specifications to, dealers who sell to other dealers who fail to maintain said resale prices.

PAR. 3. The above alleged acts and things done by respondent had and still have the capacity and tendency to constrain all dealers handling respondent's products to uniformly sell the same at said prices fixed by respondent, to prevent said dealers from selling said products at such less prices as they might and may deem to be adequate or warranted by their respective selling costs and efficiency and hence to hinder and suppress all competition in the wholesaling and retailing of said products. Respondent's said practices therefore tended and still tend to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

PAR. 4. The above alleged acts and things done by respondent 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, entitled, "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, V. Vivaudou, Inc., charging it with 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 entered into a stipulation in writing as to the facts, in which stipulation it is admitted that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth. Thereupon this proceeding came on for final hearing; and the Commission being duly advised in the premises and upon consideration thereof, makes this its report stating its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, V. Vivaudou, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its main office and principal place of business in the City of New York, State of New York. Respondent at all times hereinafter mentioned has been and still is engaged in the manufacture of toilet preparations and in the sale thereof to wholesale and retail dealers throughout the United States. It causes its products, when so sold, to be transported from its said place of business in the City of New York to said purchasers at points in various different States in the United States. In the regular course and conduct of its said business, respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of toilet preparations in interstate commerce and with the trade generally.

PAR. 2. In the regular course and conduct of its said business, and for several years last past, respondent from time to time has issued and still issues to the trade, lists wherein are set out the prices of the various toilet preparations manufactured by it, at which prices respondent desires its products to be sold to the ultimate users thereof. These lists are also used as the base prices from which discounts are allowed by respondent to retail dealers and jobbers on their purchases from respondent. The said lists have been and are circulated by respondent throughout the entire trade.

PAR. 3. On or about January 1, 1921, respondent adopted and thereafter employed a system for the maintenance and enforcement of said suggested resale prices, wherein respondent secured the cooperation of its customers, both retail dealers and jobbers, and by which method and system, respondent and those cooperating with it, undertook to prevent and did prevent other persons from obtaining respondent's products at less than said standard uniform resale prices. In carrying out said method and system, respondent and those cooperating with it as above set out employed, amongst others, the following means:

(*a*) Made it generally known to the trade by letters, personal interviews and by other means that it expected and required said vendees to maintain and enforce said suggested resale prices;

(*b*) Solicited and secured from said vendees, reports of the names of retail dealers who failed to observe and maintain said suggested resale prices, and upon obtaining such reports, urged the offenders to cease selling below said resale prices and sought to coerce said offenders into maintaining said resale prices by methods as hereinafter set out;

(*c*) Threatened to refuse to sell and did refuse to sell its products to dealers who failed to observe and maintain said resale prices and who were objectionable to respondent for other reasons;

(*d*) Exacted promises and assurances from said offenders that they would thereafter maintain said resale prices as a condition of further supplying them with its said products;

(*e*) Gave assurances and promises to dealers who reported names of said offenders that no further supplies would be sold to those dealers whose names were so reported;

(*f*) Caused the names of such offenders to be enrolled on lists which it kept for that purpose as purchasers who were not to be supplied with its products until they gave assurance or otherwise satisfied respondent that they would thereafter maintain the suggested prices. Orders from dealers whose names appeared on said lists were delayed or held up partly because they were selling below the suggested resale prices and partly for their credit and other business reasons;

(*g*) Entered into and attempted to enter into informal arrangements, agreements and undertakings with dealers for the maintenance by them, of said resale prices as a condition of opening accounts with said dealers or of continuing to fill their orders.

PAR. 4. As a result of respondent's activities as described in paragraph 3 above, the suggested prices on respondent's products were substantially maintained in some districts during the first six months of 1921.

PAR. 5. On or about the first day of July, 1921, at a meeting of the board of directors of respondent, by informal action of the directors, it was decided that no effort to control resale prices should thereafter be made except that resale prices should be suggested to customers by price lists in the same manner as theretofore had been done.

PAR. 6. The above acts and things done by respondent had the capacity and tendency to constrain all dealers handling respondent's products to sell same uniformly at said resale prices fixed by respondent, to prevent said dealers from selling said products at such different prices as they might deem to be adequate or warranted by their respective selling costs and efficiency, and hence to hinder and suppress all possible competition in the wholesaling and retailing of said products. Respondent's said practices tended to restrain the natural flow of commerce and the freedom of competition in the channels of interstate trade.

CONCLUSION.

The above practices of said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a 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 respondent, and agreed statement of fact filed herein, 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, 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, V. Vivaudou, Inc., its officers, agents, representatives, servants, and employees, do cease and desist from adopting and employing, or attempting to employ, any cooperative system or method, whereby respondent or its officers, agents, representatives, servants, or employees, undertake to prevent others from obtaining respondent's products at less than the prices designated by it, and more particularly, from carrying out any said system or method by the following means:

(*a*) Securing from its customers or others names of dealers who do not observe the resale prices fixed by respondent;

(*b*) Enrolling the names of dealers so reported or who come to its attention otherwise, upon lists of undesirable purchasers, who are not to be supplied with its products until they furnish satisfactory assurances of their purpose to maintain such prices in the future;

(*c*) Securing or attempting to secure assurances from other dealers that they will observe the resale prices on respondent's products as fixed by it;

(*d*) Giving assurances to dealers that others who do not observe rspondent's fixd resale prices will be cut off from further supplies of respondent's goods, and requesting cooperation and support in such a course of action;

(*e*) Threatening to refuse to sell or refusing to sell dealers who sell to others who do not observe the resale prices fixed by respondent;

(*f*) Attempting to establish and enforce its resale prices by any other equivalent cooperative means.

It is further ordered, That respondent, V. Vivaudou, Inc., shall, within thirty (30) days after service of this order, file with the Commission a statement showing in detail the manner and form of respondent's compliance with said order.

FEDERAL TRADE COMMISSION

v.

AJAX ROPE COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 945—October 30, 1923.

SYLLABUS.

Where a corporation engaged in the sale of rope, made for it under contract by another concern, falsely represented in its advertising, letters, business cards, tags, stencils, and otherwise that it was the manufacturer of said rope; with the result that the trade and public were deceived and misled and purchasers were induced to buy such rope in the belief that they were buying directly from the manufacturer thereof and thereby saving the profits of a middleman:

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

COMPLAINT.

Acting in the public interest 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 charges that the Ajax Rope Co., Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Said respondent is a corporation organized under the laws of the state of Delaware with its principal office and place of business in the city of New York in the state of New York. It is now and at all times hereinafter mentioned has been engaged in the business of buying and selling various kinds of rope, cable and twine, and in the course of said business sells said products to wholesale and retail dealers throughout the several states and causes said products when sold, to be transported from their place of manufacture in the city of Brooklyn, state of New York, to the purchasers thereof at points in the various states of the United States. In the course and conduct of its said business said respondent is in competition with other individuals, partnerships and corporations engaged in the sale of said products in interstate commerce.

PAR. 2. Said respondent, in the course of its business as described in paragraph 1 hereof, causes said products sold by it to be manufactured by a manufacturer in Brooklyn, New York, according to said respondent's orders and specifications, and in the solicitation for purchasers of said products, said respondent advertises in prominent magazines and newspapers having interstate circulation, on letterheads, circular letters and business cards that said respondent is the "Makers of Manila, Sisal, Wire and Marline covered rope," and also "Makers of Werwell Drilling Cables" and also causes to be inserted in certain daily papers statements to the effect that said respondent operates "mammoth rope factories" in Brooklyn, New York, and has laboratories and an engineering department in connection with its said factories and uses other language to lead the reader to believe that said respondent is a manufacturer of said products when as a matter of fact the said respondent does not own, operate or control any factory engaged in the manufacture of rope, cable or twine, but on the other hand buys from said manufacturer on order as hereinbefore set forth.

PAR. 3. The words "Makers of Manila, Sisal, Wire and Marline Rope" and "Makers of Werwell Drilling Cables" signify and are understood by a substantial part of the trade and purchasing public to mean that said respondent is a manufacturer of said products and the use of said words and the other statements by said respondent, as described in paragraph 2 hereof, is calculated to and has the capacity and tendency to mislead and deceive many among the trade and the purchasing public and to induce them to purchase the said products of the said respondent in the belief that said respondent owns, controls or operates a factory in which it manufactures the products sold by it and that persons buying from said respondent are buying directly from the manufacturer of said products and thus saving the profits of the middlemen.

PAR. 4. There are a number of manufacturers of rope, cable and twine who are in competition with said respondent in the sale and distribution of said products in interstate commerce. There are also a number of wholesale distributors of said products who do not advertise or otherwise indicate to the public that they are manufacturers of said products.

PAR. 5. The above alleged acts and things done by respondent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, Ajax Rope Company, Inc., 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 by its attorney and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint and on behalf of said respondent, before an examiner of the Federal Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and duly considered the record, 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. The respondent, Ajax Rope Company, Inc., is a corporation organized, existing, and carrying on business since January 1, 1920, under and by virtue of the laws of the State of Delaware, with its principal office in the City of New York, State of New York. It is engaged in the purchase of rope and the sale thereof to jobbers and dealers, and the public generally throughout the several States of the United States. It causes the rope so sold to be shipped from its place of manufacture in the City of Brooklyn, State of New York, to said customers at various points in the several States of the United States. In the regular course and conduct of its business respondent is in competition with other persons, partnerships and corporations, similarly engaged in the sale of rope to jobbers, dealers, and the public generally.

PAR. 2. On January 31, 1920, respondent entered into a contract with the Waterbury Company, a manufacturer of fiber and wire rope with its factories in Brooklyn, New York, whereby it was covenanted and agreed that the said Waterbury Company was to manufacture rope for respondent out of hemp to be supplied by respondent, and according to respondent's specifications, respondent agreed to pay the Waterbury Company certain rates per pound for all rope so manufactured. Respondent had and has no control over the said Waterbury Company, its employees, methods of manufacture, or business policies, nor does respondent own or operate any plant or factory for the production of rope, but depends for its entire supply upon the rope manufactured by the Waterbury Company under the terms of the said contract.

PAR. 2. Said respondent, in the course of its business as described in paragraph 1 hereof, causes said products sold by it to be manufactured by a manufacturer in Brooklyn, New York, according to said respondent's orders and specifications, and in the solicitation for purchasers of said products, said respondent advertises in prominent magazines and newspapers having interstate circulation, on letterheads, circular letters and business cards that said respondent is the "Makers of Manila, Sisal, Wire and Marline covered rope," and also "Makers of Werwell Drilling Cables" and also causes to be inserted in certain daily papers statements to the effect that said respondent operates "mammoth rope factories" in Brooklyn, New York, and has laboratories and an engineering department in connection with its said factories and uses other language to lead the reader to believe that said respondent is a manufacturer of said products when as a matter of fact the said respondent does not own, operate or control any factory engaged in the manufacture of rope, cable or twine, but on the other hand buys from said manufacturer on order as hereinbefore set forth.

PAR. 3. The words "Makers of Manila, Sisal, Wire and Marline Rope" and "Makers of Werwell Drilling Cables" signify and are understood by a substantial part of the trade and purchasing public to mean that said respondent is a manufacturer of said products and the use of said words and the other statements by said respondent, as described in paragraph 2 hereof, is calculated to and has the capacity and tendency to mislead and deceive many among the trade and the purchasing public and to induce them to purchase the said products of the said respondent in the belief that said respondent owns, controls or operates a factory in which it manufactures the products sold by it and that persons buying from said respondent are buying directly from the manufacturer of said products and thus saving the profits of the middlemen.

PAR. 4. There are a number of manufacturers of rope, cable and twine who are in competition with said respondent in the sale and distribution of said products in interstate commerce. There are also a number of wholesale distributors of said products who do not advertise or otherwise indicate to the public that they are manufacturers of said products.

PAR. 5. The above alleged acts and things done by respondent 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, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, Ajax Rope Company, Inc., 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 by its attorney and filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of the said complaint and on behalf of said respondent, before an examiner of the Federal Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the Commission, having heard argument of counsel and duly considered the record, 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. The respondent, Ajax Rope Company, Inc., is a corporation organized, existing, and carrying on business since January 1, 1920, under and by virtue of the laws of the State of Delaware, with its principal office in the City of New York, State of New York. It is engaged in the purchase of rope and the sale thereof to jobbers and dealers, and the public generally throughout the several States of the United States. It causes the rope so sold to be shipped from its place of manufacture in the City of Brooklyn, State of New York, to said customers at various points in the several States of the United States. In the regular course and conduct of its business respondent is in competition with other persons, partnerships and corporations, similarly engaged in the sale of rope to jobbers, dealers, and the public generally.

PAR. 2. On January 31, 1920, respondent entered into a contract with the Waterbury Company, a manufacturer of fiber and wire rope with its factories in Brooklyn, New York, whereby it was covenanted and agreed that the said Waterbury Company was to manufacture rope for respondent out of hemp to be supplied by respondent, and according to respondent's specifications, respondent agreed to pay the Waterbury Company certain rates per pound for all rope so manufactured. Respondent had and has no control over the said Waterbury Company, its employees, methods of manufacture, or business policies, nor does respondent own or operate any plant or factory for the production of rope, but depends for its entire supply upon the rope manufactured by the Waterbury Company under the terms of the said contract.

PAR. 3. Respondent procures its supply of hemp through an individual broker, John C. Waterbury, who is also secretary and treasurer of the said Waterbury Company, and who buys all the hemp that is used by the said Waterbury Company in the manufacture of rope for all its trade, including respondent. The hemp purchased for respondent is delivered to the factory of the Waterbury Company and stored with other hemp, and only such hemp as is actually used in the rope delivered to respondent is paid for by it. Said Waterbury makes no charge for such services as purchaser of hemp. Respondent sends its orders for rope direct to the superintendent of the Waterbury factory, and he thereupon causes such rope to be manufactured and placed at the disposal of respondent.

PAR. 4. In the regular course and conduct of its business, respondent has represented and caused to be represented by means of advertisements, in publications having an interstate circulation, by letters, business cards, tags, stencil marks, and otherwise, that it was and is the manufacturer or maker of the rope sold and offered for sale by it. As a result of said representations, purchasers are led to believe and do believe that respondent is the maker or manufacturer of the rope which it sells, and are induced to purchase rope from respondent under the belief that they are purchasing direct from the manufacturer thereof, who is responsible for its actual construction, and also that they are therefore saving the profits of a middleman.

PAR. 5. Many large consumers of rope prefer to buy, and do buy, their supplies of rope directly from manufacturers, and several such consumers have purchased respondent's rope, under the belief that they were buying from the manufacturer thereof. There are a number of concerns which actually make the rope which they sell, and which compete with respondent.

PAR. 6. The said representations that respondent is the manufacturer of the rope which it sells and offers for sale are false and are calculated to, and do, mislead and deceive the trade and the public generally.

CONCLUSION.

The above practices of said respondent under the conditions and circumstances as set forth in the foregoing findings of fact, 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 upon the complaint of the Commission, the answer of respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that respondent, Ajax Rope Company, Inc., has violated 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,"

It is now ordered, That respondent, its officers, agents, representatives and employees, cease and desist from representing or causing to be represented, by advertisements, labels, tags, stencil marks, circulars, verbal statements, or in any other manner—

1. That the respondent, Ajax Rope Company, Inc., is the maker or manufacturer of the rope which it sells and offers for sale, unless and until said respondent shall engage in the manufacture of such rope; or

2. That the respondent, Ajax Rope Company, Inc., is the maker or manufacturer of the rope which is made for it by the Waterbury Company of the City of Brooklyn, State of New York, either by virtue of contract obligations or in any other manner.

It is further ordered, That respondent, Ajax Rope Company, Inc., shall within sixty (60) days from the date of service of this order upon it, file with the Commission a report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

FEDERAL TRADE COMMISSION
v.
BROWN-PHELPS HOSIERY COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1063—October 30, 1923.

SYLLABUS.

Where a corporation engaged in the manufacture and sale to wholesale and retail dealers of hosiery, in competition with concerns which correctly branded, labeled, and advertised their products in respect of composition, sold hosiery composed of silk and vegetable fibre, branded, labeled and advertised as "Special Thread Silk Hosiery," "Silk," "Special Silk," "Ladies' Plated Silk Hose": with the capacity and tendency thereby to mislead and deceive the trade and the purchasing public with reference to the composition of said goods and to induce the purchase thereof:

Held, That the sale of goods branded, labeled and advertised as above set forth constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that the Brown-Phelps Hosiery Company, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in the City of Philadelphia in said State. It is engaged in the manufacture of hosiery and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said hosiery when so sold to be transported from its said principal place of business at Philadelphia, Pennsylvania, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships and corporations similarly engaged in the manufacture and/or sale of hosiery in interstate commerce and with the trade generally.

PAR. 2. For about a year last past respondent has packed certain hosiery manufactured and sold by it to aforesaid dealers and consisting partly of silk derived from the cocoon of the silk worm and partly of vegetable fibre and material other than such silk, in containers bearing labels upon which appear the words "Special Thread Silk Hosiery" or other phrases representing said hosiery to be composed of such silk without disclosing the fact that said hosiery is in part composed of vegetable fibre or other material not derived from the cocoon of the silk worm. Respondent further advertises said hosiery to the trade in various trade publications and magazines, and in correspondence and dealings with its dealer customers respondent uses price lists, catalogues and other trade literature in which respondent causes said hosiery to be listed and designated as "Silk," "Special Silk," "Ladies Plated Silk Hose," and by other similar designations representing said hosiery to be made of such silk and without disclosing the fact that said hosiery is composed in part of vegetable fibre and other material not derived from the cocoon of the silk worm.

PAR. 3. The term "silk" is used and understood by the trade and purchasing public to mean a commodity derived wholly from the cocoon of the silk worm, wherefore, respondent's use of the aforesaid phrases containing the word "silk" in the manner and under the circumstances set out in paragraph 2 hereof, has the capacity and tendency to mislead and deceive the trade and the purchasing public into the erroneous belief that respondent's said hosiery is composed wholly of material derived from the cocoon of the silk worm and containing no vegetable fibre or other material not so derived, and to cause the trade and public to purchase said hosiery in that belief.

PAR. 4. The above alleged acts and things done by respodnent 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 entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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, Brown-Phelps Hosiery Company, charging it with unfair methods of competition in commerce, in violation of the provisions of said act. Said respondent having entered his appearance and having filed his answer to said complaint, and having entered into a stipulation in writing as to the facts, thereupon this proceeding came on for final hearing, and the Commission being fully advised in the premises, and upon consideration thereof, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Brown-Phelps Hosiery Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the city of Philadelphia, in said State. It is engaged in the manufacture of hosiery and the sale thereof to wholesale and retail dealers located at points in various States of the United States. It causes said hosiery when so sold to be transported from its said principal place of business at Philadelphia, Pennsylvania, into and through other States of the United States to said purchasers at their respective points of location. In the course and conduct of its said business respondent is in competition with other individuals, partnerships, and corporations similarly engaged in the manufacture and/or sale of hosiery in interstate commerce and with the trade generally.

PAR. 2. For about a year last past respondent has packed certain hosiery manufactured and sold by it to aforesaid dealers and consisting partly of silk derived from the cocoon of the silk worm and partly of vegetable fibre and material other than such silk, in containers bearing labels upon which appear the words "Special Thread Silk Hosiery" or other phrases representing said hosiery to be composed of such silk without disclosing the fact that said hosiery is in part composed of vegetable fibre or other material not derived from the cocoon of the silk worm. Respondent further advertises said hosiery to the trade in various trade publications and magazines, and in correspondence and dealings with its dealer customers, respondent uses price lists, catalogues and other trade literature in which respondent causes said hosiery to be listed and designated as "Silk," "Special Silk," "Ladies Plated Silk Hose," and by other similar designations representing said hosiery to be made of such silk and without disclosing the fact that said hosiery is composed in part of vegetable fibre and other material not derived from the cocoon of the silk worm.

PAR. 3. The term "silk" is used and understood by the trade and purchasing public to mean a commodity derived wholly from the cocoon of the silk worm, wherefore, respondent's use of the aforesaid phrases containing the word "silk" in the manner and under the circumstances set out in paragraph 2 hereof, has the capacity and tendency to mislead and deceive the trade and the purchasing public into the erroneous belief that respondent's said hosiery is composed wholly of material derived from the cocoon of the silk worm and containing no vegetable fibre or other material not so derived, and to cause the trade and public to purchase said hosiery in that belief.

PAR. 4. Competitors of respondent are engaged in selling and shipping hosiery made of vegetable fibre and of silk similar to the hosiery sold by respondent, which hosiery so shipped and sold by said competitors is labeled, advertised and branded accurately and truthfully.

CONCLUSION.

That the practices set forth in the foregoing findings as to the facts constitute, under the circumstances therein set forth, 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 answer of the respondent, and the stipulation as to the facts, and the Commission having made its findings as to the facts with its conclusion that the 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, Brown-Phelps Hosiery Company, its officers, agents, representatives, servants, and employees, cease and desist from, directly or indirectly:

(1) Using as labels or brands on hosiery sold by it, or on the containers thereof, or in advertisements thereof, the word "Silk" or any modification thereof (a) unless the hosiery on which it is used is made entirely of silk 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 materials of which such hosiery is in part composed.

Respondent is further ordered to file a report in writing with the Commission sixty (60) days from notice hereof stating in detail the manner in which the respondent has complied with the order herein.

FEDERAL TRADE COMMISSION
v.
HERMAN M. NEUSCHATZ AND I. M. HALPERN, CO-PARTNERS DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF PERUVIAN RUBBER CEMENT COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 1069—October 30, 1923.

SYLLABUS.

Where a corporation under the name "U-Glu, Inc." manufactured and sold a millinery glue packed and marketed in cans the labels of which prominently displayed its registered trade-mark consisting of the word "U-Glu" surrounded by a wreath in connection with the word "Trade-Mark", which labels also contained a statement in respect of the purposes, characteristics, and use of said product; and thereafter a competitor, which had never registered any trade name or trade-mark with the United States Patent Office,

(*a*) Adopted and placed the name "Glu" surrounded by a wreath, in connection with the words "Trade-Mark", upon the labels of its product, which it marketed and sold in containers similar in shape and size to those of said corporation; and

(*b*) Used labels which also in size and design, in the use of a practically identical statement of purposes, characteristics and use, and in the arrangement thereof upon the labels, closely resembled those of said corporation:

Held, That such simulation of trade-mark and label of a competitor, under the circumstances set forth, constituted an unfair method of competition.

COMPLAINT.

Acting in the public interest 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 charges that Herman M. Neuschatz and I. M. Halpern, partners doing business under the trade name and style of Peruvian Rubber Cement Company, hereinafter referred to as respondent, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents are partners doing business under the trade name and style "Peruvian Rubber Cement Company" with their principal place of business in the City and State of New York. They are engaged in the manufacture of a certain glue or cement, hereinafter called millinery glue, adapted for and used in the manufacture of millinery, and the sale of said millinery glue to persons, partnerships and corporations engaged in the millinery trade, including wholesalers and retailers of millinery supplies, and located at points in the various States of the United States. They cause said product when so sold to be transported from their aforesaid 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 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 manufacture and/or sale of millinery glue and similar products in interstate commerce.

PAR. 2. Among the aforesaid competitors of respondents is U-Glu, Incorporated, a corporation organized under the laws of the State of New York with its principal place of business in the City of New York in said State. Said competitor is hereinafter referred to as the "corporation." For more than two years last past the corporation has manufactured and sold in interstate commerce, and still manufactures and so sells, a millinery glue named by the corporation "U-Glu." During said time the corporation has used as a trademark under and in connection with which to market its said millinery glue, a device consisting of the word U-Glu surrounded by a wreath in connection with the words "trade-mark." During aforesaid time the corporation has packed and marketed its said millinery glue in cans upon which it has caused to be placed certain labels bearing the word U-Glu and aforesaid trademark prominently displayed together with certain statements and assertions concerning the purposes to which said millinery glue is adapted, certain characteristics possessed by it and directions for its use. The corporation still markets its said millinery glue packed and labelled as above set out.

PAR. 3. In about the beginning of the year 1922 respondents adopted for their aforesaid millinery glue the name "G L U" and have continuously since marketed their said millinery glue under and in connection with said name. During said time respondents have packed and marketed their said millinery glue in cans similar in shape and size to the cans of the corporation referred to in paragraph 2 hereof, and during said time have caused certain labels to be placed upon said cans, which said labels closely resemble aforesaid labels of the corporation in size and design. Upon their said labels respondents caused to be placed the word G L U in quotation marks, and a device consisting of the word G L U surrounded by a wreath and in connection with the words "trade mark", all in form and design closely resembling the aforesaid trade-mark of the corporation. Respondents further caused to be printed upon their said labels certain statements and assertions concerning the purposes to which their said millinery glue is adapted, certain characteristics possessed by it and directions for its use, all practically identical with the statements appearing upon the labels of the corporation as set out in paragraph 2 hereof. Respondents still market their said millinery glue packed and labeled as above set out.

PAR. 4. The aforesaid labels attached by respondents to the cans in which they market their millinery glue, all as set out in paragraph 3 hereof, have the capacity and tendency to mislead and deceive the millinery trade and other purchasers and users of millinery glue into the erroneous belief that the millinery glue manufactured and sold by respondents is the millinery glue manufactured and sold by the corporation, and to cause the millinery trade and said other purchasers and users, acting in said belief, to purchase the millinery glue of respondents as and for the millinery glue of the corporation.

PAR. 5. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' 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.

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, Herman M. Neuschatz and I. M. Halpern, copartners doing business under the trade name and style of Peruvian Rubber Cement Company, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having made, executed and filed an agreed statement of facts in which it is stipulated and agreed by respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and 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, without the introduction of testimony or the presentation of argument in support of same, the Federal Trade Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondents are copartners doing business under the trade name and style of "Peruvian Rubber Cement Company," having an office and principal place of business at No. 73 Fourth Avenue, Borough of Manhattan, City, County and State of New York, and their factory at 340 Hamilton Street, Long Island City, New York. They are engaged in the manufacture of a certain glue or cement, sometimes called millinery glue and adapted for and used in the manufacture of millinery, and respondents are engaged in the sale of the said millinery glue to persons, partnerships and corporations, including wholesale and retail dealers in millinery supplies located at points in the various states of the United States of America, some of whom are located in states other than the State of New York. Respondents cause said millinery glue when so sold by them to be transported from their aforesaid place of business or factory in the State of New York to, into and through other states of the said United States to the purchasers of said millinery glue at their respective points of location in said other states. In the course and conduct of their said business respondents are in competition with other individuals, persons and corporations engaged in the manufacture and sale of millinery glue and similar products in interstate commerce.

PAR. 2. That among the aforesaid competitors of respondents is "U-Glu Inc.", a corporation organized under the laws of the State of New York, with its principal place of business in the City of New York in said State. Said "U-Glu Inc." for more than three years prior to the 19th day of September 1923, has manufactured and sold, and still manufactures and sells to purchasers located in various states of the said United States other than in the State of New York, a millinery glue called "U-Glu", and during aforesaid time has caused and still causes said millinery glue called "U-Glue" when so sold by it to be transported from the State of New York to, into and through said other states to the said purchasers of the said "U-Glu" at their respective points of location. Prior to, and during the aforesaid time said corporation has used the name "U-Glue" as a trade name, and said corporation caused this trade name to be registered as a trade-mark in its said business at the United States Patent Office in the early part of 1922, said trade-mark consisting of the said word "U-Glu" surrounded by a wreath in connection with the word "Trade-Mark". During the aforesaid time the said corporation has packed and marketed its said millinery glue as aforesaid in cans upon which it has caused and still causes to be placed certain labels bearing the said word "U-Glu" or the said trade-mark prominently displayed, together with certain statements and assertions concerning the purposes to which said millinery glue is adapted and certain characteristics possessed by it, with directions for the use of the said millinery glue.

PAR. 3. That subsequent to the use by the said corporation, "U-Glu Inc.", of the trade name "U-Glu" and the trade mark "U-Glu" as above set forth the respondents in about the beginning of the year 1922 adopted for the millinery glue manufactured and sold by them as aforesaid the name "Glu" and have since said time caused to be placed upon cans in which it has marketed and sold its said millinery glue as aforesaid certain labels bearing the said word "Glu" and also the said word "Glu" surrounded by a wreath in connection with the words "Trade-Mark." The said respondents have not now nor during any of the aforesaid times registered the device consisting of the word "Glu" surrounded by a wreath, used by them in connection with the words "Trade-Mark" with the United States Patent Office, and respondents have no trade name or trade mark whatsoever registered with the United States Patent Office in connection with their sale of millinery glue as aforesaid. During the aforesaid time the respondents have packed and marketed their said millinery glue in cans similar in shape and size to the cans of the corporation above named, and since the early part of the year 1922 have caused certain labels to be placed upon said cans closely resembling the aforesaid labels of the corporation in size and design. Besides the use upon their labels of the said pretended trade mark by the respondents, and the said word "Glu", respondents cause their said labels to be printed closely resembling the labels of the aforesaid corporation in size and design. Respondents cause the statement of the purposes for which their millinery glue is used and the statement of the directions for its use to be printed upon their said labels practically identical with the statements of the aforesaid corporation which it has upon its labels regarding the purposes and the directions for the use of its product, and the respondents have caused the said statements and assertions to be placed upon their labels so that their location on the labels correspond to the location of the said similar statements of the said corporation on its labels. Annexed to this statement of facts is one of the said labels of the aforesaid corporation marked "Commission's Exhibit No. 1"[1] and one of the labels aforesaid used by the respondents marked "Commission's Exhibit No. 2".[1]

CONCLUSION.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods

[1] Not published.

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 agreed statement of facts made and executed by the respondents and 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 the respondents, Herman M. Neuschatz and I. M. Halpern, individually and as copartners doing business under the trade name and style of Peruvian Rubber Cement Company and/or National Rubber Mfg. Co., their agents, representatives, servants and employees, do cease and desist from describing the commodity known as millinery glue, manufactured and sold by respondents, by or with the name spelled "Glu" either alone or surrounded by a wreath or other device with or without connection with the words "Trade-Mark" on any labels attached to a container or containers or in connection with any printed matter relating to the said commodity, dealt in by respondents known as millinery glue.

Respondents shall cease and desist from using labels on a container or containers of their said product which are printed closely resembling the labels of the corporation known as "U-Glu" Inc.", in color, size and design, and from printing upon the said labels any statement of the purposes of the use of said millinery glue or directions for its use, the words of which statement or the manner of their arrangement are identical or substantially identical with such statements heretofore used upon the labels of the aforesaid corporation "U-Glu Inc."

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

CASES IN WHICH ORDERS FOR DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1923. Mar. 12	727	Austin Bond, doing business under the trade name and style of Bond Bros. & Co., New York.	Overissued or unused newspapers.	Appropriation of trade name, trade-mark, and code address of competitor.	Answer	No reasons assigned.
24	838	Gypsum Industries Association, its officers, committees, and members.[1]	Gypsum products	Conspiring to hamper competition by restricting customer dealers to the territory in which they may sell and by limiting sales to those customer dealers who observe such limitations, "thereby hampering and obstructing the business of dealers who sell such products upon mail orders or otherwise for delivery at points other than those at which they maintain retail establishments."	do	"It appearing that on Jan. 3, 1923, the District Court of the United States for the Southern District of New York entered a decree in an action then pending therein in which the United States of America was complainant and Gypsum Industries Association et al. were defendants, by which decree the issues in the above-entitled proceeding were adjudicated and disposed of: "*It is ordered*, That the complaint herein be and the same hereby is dismissed."
Apr. 10	869	Baltimore & Philadelphia Steamboat Co.	Transportation service.	Selling below cost for the purpose of eliminating a competitor.	Trial	No reasons assigned; dismissed without prejudice, Commissioner Gaskill dissenting.
11	215	Minerals Separation, Ltd.; Minerals Separation American Syndicate, Ltd.; Minerals Separation American Syndicate (1913) Ltd.; Beer, Sondheimer & Company; Beer, Sondheimer & Company, Inc.; Minerals Separation North American Corporation; Benno Elkan, Otto Frohnknecht, Harry Falck.	Paraphernalia, supplies, etc., having to do with the separation and concentration of ores by flotation.	With the intent and effect of stifling competition and of tending to create a monopoly; agreeing to prevent dealings in competitive apparatus, processes, commodities, etc., except upon permission, granted only upon payment of an exorbitant commission; to discriminate in the matter of such commissions between favored independent concerns dealing in such competitive apparatus and those whom it was desired to discipline and make examples of; to exact from and impose upon mine operators, metallurgists, engineers, etc., both within and without respondents' employ, exorbitant royalties and burdensome and unfair agreements, terms, and conditions both in connection with the use of respondents' apparatus, paraphernalia, processes, etc., and in connection with the use of competitive appa-	do	Dismissed "for lack of appearance of interstate commerce," Commissioner Thompson, in concurring therein, however, filing the following statement: "I agree with my associates that interstate commerce appears to be lacking in this case, and have, therefore, voted that the complaint should be dismissed. However, I believe it to be my duty, in view of the public interest involved to state that in my opinion the Minerals Separation, Ltd., of London, exceeded its authority in promiscuously sending out under its

					ratus, paraphernalia, processes, etc.; to discriminate in the matter of royalties between mine operators favored and those whom it was desired to discipline or make examples of; disparaging competitors and their products; making false and malicious patent claims and threats of infringement suits; intimidating and coercing competitors and their customers or prospective customers; espionage; discrimination in price in violation of section 2 of the Clayton Act; and tying or exclusive contracts or dealings in violation of section 3 thereof.		attorneys' signatures, to over four hundred mine operators a letter charging them with 'infringement of' its 'clients' patents for froth flotation concentration of ores,' and it acted unfairly and negligently when, without any first-hand knowledge of whether the recipients were actually using flotation or violating respondents' patent rights, ordered them in the said letter as follows: 'You are therefore hereby directed to send me a full statement of your infringing operations in accordance with the interrogatories inclosed herewith, in default whereof I am directed to commence suit against you for an injunction, profits, and damage, including a preliminary injunction at the commencement of the suit to immediately stop your infringing operations.' "
Apr	18	207	The Cleveland Macaroni Co.	Macaroni, noodles, and kindred products.	Subsidizing salesmen	Answer and trial	"Dismissed for the reason that respondent, Cleveland Macaroni Co., was adjudicated a bankrupt and now out of business."
	18	520	Procter & Gamble Distributing Co.	Soaps	Guarantee against price decline	do	No reasons assigned.
	18	850	Goheen Manufacturing Co.	Paints	Advertising falsely and misleadingly	Answer	Respondent "was adjudicated a bankrupt and now out of business."
	18	939	Braden's California Products, Inc., and A. Claude Braden.	Jams, preserves, and marmalades.	Simulating corporate name and labels of competitor.	do	No reasons assigned.
	28	624	Autographic Register Co.	Supplies for registers	Tying or exclusive contracts	Answer and trial	Do.

[1] The members of such association (and joined as respondents), according to the complaint, are as follows: Acme Cement Plaster Company, Illinois; American Cement Plaster Company, Kansas; American Gypsum Company, Ohio; Cardiff Gypsum Plaster Company, Iowa; Centerville Gypsum Company, Iowa; Colorado Portland Cement Company, Colorado Connecticut Adamant Plaster Company, Connecticut; Dakota Plaster Company, South Dakota; Ebsary Gypsum Company, New York; Empire Gypsum Company, New Jersey; Grand Rapids Plaster Company, Michigan; Higginson Manufacturing Company, New York; Kelley Plaster Company, Pennsylvania; J. B. King & Company, New York; Alabastine Company (which carries on a portion of its business under the name and style of the Michigan Gypsum Company), Michigan; Nephi Plaster & Manufacturing Company, Utah; Niagara Gypsum Company, New York; Overland Cement Plaster Company, Wyoming; Pacific Coast Gypsum Company, Washington; Plymouth Gypsum Company, Iowa; Rock Plaster Manufacturing Company, New York; Southern Gypsum Company (Inc.,) Virginia; United States Gypsum Company, New Jersey; Wasem Plaster Company, Iowa.

The executive officers and the members of certain standing committees of the respondent Gypsum Industries Association (joined as respondents), are as follows: Ray C. Haynes, president and member of the executive committee, which committee is ex officio the board of directors of said association; James Leenhouts, vice president and member of the executive and trade relations committee; R. G. Bear, treasurer and member of the executive and trade relations committee; H. H. McDonald, secretary; M. A. Reeb, member of the executive and trade relations committees; A. R. Black, L. E. Armstrong, A. A. Wolf, J. C. Seguine, and W. E. Shearer, members of the executive committee; H. W. Blacksom, Warren Henley, E. G. West, H. C. Hamilton, and F. G. Ebsary, members of the trade relations committee.

Cases in which orders for discontinuance or dismissal have been entered—Continued.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1923. May 7	989	Paul E. Peck and Richard K. Peck, copartners doing business under the name of Paul E. Peck & Son.	Steamship supplies	Commercial bribery	Answer	Dismissed "for the reasons that the respondents have been adjudicated bankrupts; that the respondent Paul E. Peck is now deceased, and said partnership is dissolved and no longer doing business."
14	131	Atlantic Refining Co	Oil pumps, tanks, and outfits.	Misrepresenting competitors' products and prices; inducing and attempting to induce breach of competitors' contract; selling and loaning equipment below cost with the intent and effect of suppressing and stifling competition; intimidating or threatening customers of competitors; and falsely representing self as agent for or dealer in both the products of competitor and the products actually handled and quoting exorbitant prices on the former; all in violation of Section 5; and price discrimination in violation of Section 2 of the Clayton Act.	Answer and trial	"*It is ordered, that the complaint* herein be and the same is hereby dismissed, by reason of the decision of the Supreme Court of the United States in the Pump and Tank cases, Federal Trade Commission *v.* Sinclair Refining Co. et al." (261 U. S. 463).
14	308	Ohio Cities Gas Co	do	Leasing oil tanks, pumps, and devices for nominal consideration, based on exclusive or tying contracts or dealings in violation of Sections 5 and 3 of the Federal Trade Commission and Clayton Acts respectively.	do	Do.
14	324	Factory Oil Co	do	do	do	Do.
15	227	Helvetia Milk Condensing Co. et al.[1]	Evaporated milk	Guarantee against price decline	do	Dismissed without prejudice; no reasons assigned; Commissioners Thompson and Nugent dissenting.
15	372	Standard Oil Co. of Kentucky	Oil pumps, tanks, and outfits.	Leasing oil tanks, pumps, and devices for nominal consideration, based on exclusive or tying contracts or dealings in violation of Sections 5 and 3 of the Federal Trade Commission and Clayton Acts respectively.	do	"*It is ordered, that the complaint* herein be and the same is hereby dismissed, by reason of the decision of the Supreme Court of the United States in the Pump and Tank cases, Federal Trade Commission *v.* Sinclair Refining Co. et al." (261 U. S. 463).
15	544	Valvoline Oil Co	do	do	Answer	Do.
15	587	Tidewater Oil Co., Tidewater Oil Sales Corporation and Tidewater Oil Co. of Mass.	do	do	do	Do.

18	800	Herbert W. Brand, Harry C. Oppenheimer, and Edwin W. Brand, partners, doing business under the name and style of Brand & Oppenheimer.	Linings for clothing	Advertising falsely and misleadingly, misbranding or mislabeling, and misrepresenting products.	do	No reasons assigned; dismissed without prejudice, Commissioner Nugent dissenting.
23	710	Tidewater Oil Co., Tidewater Oil Sales Corporation.	Lubricating oil	Advertising falsely and misleadingly	Trial	No reasons assigned.
June 4	695	Associated Oil Co., Inc., Adey-Johnston Co., Inc., E. A. Adey, Jr., S. B. Coleman, and B. V. Johnston.	Oil stock	do	do	Do.
4	820	Carnick Bros. Co	Iron and steel specialties.	Misrepresenting products.[3]	do	Respondent has gone out of business.
4	953	C. C Cannan	Oil stocks or shares	Advertising falsely and misleadingly	do	No reasons assigned.
22	895	Otto Eisenlohr & Bros. (Inc.)	Cigars	Resale price maintenance	Stipulation	No reasons assigned. Commissioner Nugent dissents.
25	897	M. T. K. Products Co., a Trust; J. A. Menard, John E. Burkheimer, B. G. Raymond, H. P. Vogt, R. G. Townsend, and their successors, trustees under said trust; M. T. K. Sales Corporations, and Beckley-Ralston Co.	Abrasive bearing-fitting compound.	Intimidating customers and prospective customers of competitors through vague and general infringement claims and threatened suits	Answer	"Charges of the complaint are not supported by the proof."
July 7	807	Athol Manufacturing Co	Cotton fabric	Naming product misleadingly and advertising falsely and misleadingly.	do	No reasons assigned.
17	767	Wichita-Engle Oil Co., E. U. Engle, C. T. Engle, and W. S. Pratt.	Oil shares	Advertising falsely and misleadingly	Trial	Do.

[2] In addition to the Helvetia Milk Condensing Co., there were joined in this case as intervening respondents the following concerns: Northfield Milk Products Co., Waverly Condensed Milk Co., Whitehouse Milk Products Co., Valecia Evaporated Milk Co., Van Camp Packing Co., Snohomish Dairy Products Co., Sturtevant, Wright & Wagner Dairy Co., Rogers Milk Corporation, Pennsylvania Milk Products Co., Perry Packing Co., Ohio Dairy Co., Middle States Creamery Co., Litchfield Creamery Co., Larimer County Cooperative Milk Condensery Co., John F. Jelke Co., Hope Condensed Milk Co., Goshen Milk Condensing Co., Badger Condensed Milk Co., Diamond Creamery Co., Dewart Milk Products Co., Continental Condensed Milk Co., Cremo Milk Co., Brownback Condensed Milk Co., Aviston Condensed Milk Co., American Milk Co., St. Lawrence Condensed Milk Corporation, P. E. Sharpless Co., Oatman Condensed Milk Co., Morey Condensery, Mohawk Condensed Milk Co., Libby, McNeil & Libby, Indiana Condensed Milk Co., Armour & Co., Grand Ledge Milk Co., Colorado Condensed Milk Co., Alpine Evaporated Cream Co., Carnation Milk Products Co., Borden's Condensed Milk Co., Danish Pride Milk Products Co., F. C. Mansfield Co., Lake Mills Condensed Milk Co., Waterloo Creamery Co., Wisconsin Dairy Products Co., Wisconsin Condensed Milk Co., Wisconsin Butter & Cheese Co.

Respondent is engaged in the export business, the complaint being under Section 5 of the Federal Trade Commission Act, as extended by Section 4 of the Webb Act.

Cases in which orders for discontinuance or dismissal have been entered—Continued.

Date of order.	Docket No.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1923. July 31	729	South Bend Bait Co.	Fishing tackle, artificial bait, etc.	Discriminating in price in violation of Sections 5 and 2 of the F. T. C., and Clayton Acts, respectively.	Answer and trial.	This matter being before the Commission for consideration in connection with the denial by the Supreme Court of the United States of a writ of certiorari in the case of the Commission against The Mennen Company, Docket No. 606 [*Federal Trade Commission* v. *Mennen Co.*, 262 U. S. 759, refusing to review the decision of the lower court in *Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774]; and it appearing that the subject matter of the complaint herein falls within the judgment of the Circuit Court of Appeals for the Second Circuit in said case [*Mennen Co.* v. *Federal Trade Commission*, 288 Fed. 774]. "It is hereby ordered on the Commission's own motion, that the order to cease and desist herein, dated March 14, 1922 [3 F. T. C. 355], be and the same is hereby, revoked and that the complaint herein be, and the same is hereby, dismissed."
Sept. 12	1008	S. A. Samuels, L. E. Samuels, L. H. Samuels, Harry H. Samuels, doing business under the name and style of Cocoa Products Co.	Cocoa and chocolate preparations.	Securing business through unauthorized alteration of customers orders.	Answer.	No reasons assigned.
14	728	American Safety Razor Corp.	Shaving brushes.	Advertising falsely and misleadingly and mislabeling.	Answer and trial.	Do.
27	1057	Abner Frankel and Alexander Frankel, partners doing business under the trade name and style of The Willard Tailoring Co.	Men's clothing.	Holding out false and misleading prospects of future price concessions on articles contracted for, and meeting contract obligations unfairly.	Answer.	Dismissed without prejudice; no reasons assigned.

Oct 9	966	*J. B. Harris-Mexia Trust, J. B. Harris-Mexia Trust No. 2, J. B. Harris.*	*Oil shares and securities.*	*Advertising falsely and misleadingly and misrepresentations.*	*Answer and trial.*	*No reasons assigned.*
24	551	Armour & Co.	Butterine, oleomargarine, and nut margarine.	Tying or exclusive contracts or dealings in violation of Sections 5 and 3 of the F. T. C. and Clayton Acts, respectively.	Answer	The above entitled proceeding coming on to be heard upon the pleadings and the Commission having considered the matter and being advised in the premises: "*It is ordered*, That by reason of the decision and order of the Circuit Court of Appeals for the Seventh Circuit, in the matter of B. S. Pearsall Butter Company, petitioner, *vs.* Federal Trade Commission, respondent (October Term, 1922, April session, 1923 [292 Fed. 720]), the complaint in the above entitled proceeding be and the same is hereby dismissed without prejudice."
24	552	Swift & Co.	Oleomargarine and butterine.	do	do	Do.
24	553	Downey-Farrell Co.	do	do	do	Do.
24	554	Wm. J. Moxley, Inc	do	do	do	Do.
24	555	Ed. S. Vail Butterine Co.	do	do	do	Do.
24	559	Troco Nut Butter Co.	do	do	do	Do.
24	560	Friedman Manufacturing Co.	do	do	do	Do.
24	778	Tide Water Oil Co. and Tide Water Oil Sales Corporation.	Petroleum products	Cumulative rebates or discounts and price discrimination (the latter charged as in violation of Section 2 of the Clayton Act as well as Section 5 of the F. T. C. Act).	do	Dismissed without prejudice, no reasons assigned, Commissioner Thompson dissenting.

APPENDIX I.

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS.

FEDERAL TRADE COMMISSION ACT.[1]

[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.

[1] 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 (Feb. 14, 1923, to Nov. 4, 1923) and arising under this act are printed in full in Appendix II hereof (see *infra*, p. 559 et seq.). Previously reported decisions will be found set forth in Appendix II of Volumes II, III, IV, and V 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.

Chairman to be chosen by commission.

Pursuit other business prohibited.

Removal by President.

Vacancy not to impair exercise of powers by remaining commissioners.

Seal judicially noticed.

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.

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. 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 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 Congressmen Covington for (references to Congressional Record, 63d Cong., 2d sess., vol. 51), part 9, pp. 8840–8849; 9068; 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, 11186–11189 (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, 13299–13301; Clapp against, 11872–11873 (part 12), 13061–13065 (part 13), 13143–13146, 13301–13302; Cummins for, 11102–11106 (part 11), 11379–11389, 11447–11458 (part 12), 11528–11539, 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); Lippit 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; Saulsbury for, 11185, 11591-11594 (part 12); Shields against, 13056-13061 (part 13), 13140-13148; 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.

May prosecute any inquiry anywhere in United States.

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.

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;[a] 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.[b]

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.

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[a] For text of Sherman Act, see footnote on pp. 533-535.

[b] 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. 519.

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.

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.

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.

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 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.

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.

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.

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 shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.[3]

Liability under antitrust acts not affected.

Service of Commission's complaints, orders, and other processes.

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.

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.

Sec. 6. FURTHER POWERS.[4]

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.

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[3] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[4] 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,[5] 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[5] 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[5] 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.

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[5] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

Sec. 6. FURTHER POWERS—Continued.

To make reports to Congress, together with recommendations for new legislation.

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 provide for publication of its reports and decisions.

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 foreign trade of 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,[6] 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.

To ascertain and report an appropriate form of decree.

Commission to proceed on notice to parties and as prescribed by court. Exceptions. Proceedings as in other equity causes.

Court may adopt or reject report in whole or in part.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.[7]

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

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[6] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 523.

[7] 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. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.[7a]

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 subpœna 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 subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Commission to have access to documentary evidence and right to copy same.

May require attendance of witnesses and production of evidence.

Subpœnas, oaths, affirmations, examination of witnesses. Reception of 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 subpœna 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.

Witnesses and evidence may be required from any place in United States.

Disobedience to a subpœna. Commission may invoke 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 subpœna 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.

In case of contumacy or disobedience of subpœna, any district court in jurisdiction involved may order obedience.

Disobedience thereafter punishable as contempt.

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.

Mandamus from District Courts on application of Attorney General to enforce compliance 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 depositions at any stage.

[7a] 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.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

May be taken before person designated by Commission.

gation. Such depositions may be taken before any person designated by the commission and having power to administer oaths.

Testimony to be reduced to writing, etc.

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.

Appearance, testimony, and production of evidence may be compelled as in proceeding before Commission.

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.

Witness fees, same as paid for like services in United States courts.

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.

Incriminating testimony or evidence no excuse for failure to testify or produce.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpœna 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 natural person shall not be prosecuted with respect to matters involved.

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 subpœna issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

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 subpœna 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.

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* 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 to 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[9] 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.[1]

[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

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[9] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in last paragraph of sec. 4 of this act, see p. 528.

[1] 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 Nov. 4, 1923) 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, and *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.); and *Mennen Co. v. Federal Trade Commission*, 288 Fed. 774 (see opinion and decision set forth in Appendix II of this volume 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 this volume at p. 587 et seq.); and *B. S. Pearsall Butter Co.*, 292 Fed. 720 (see opinion and decision set forth in Appendix II of this volume at p. 605 et seq.).

It should be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess.) 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. 169, sec.

July second, eighteen hundred and ninety[2]; 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,

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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. 456 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 limitation imposed in connection with the appropriations for enforcing the Sherman Act as set forth in the following note.)

[2] The Sherman Act (26 Stat. 209), which, as a matter of convenience, is printed herewith. While the Act itself has not been amended, appropriations for the fiscal years ending June 30, 1920, 1921, 1922, and 1923 (Sundry Civil Appropriation Act, July 19, 1919, ch. 24, 41 Stat. 208, Sundry Civil Appropriation Act, June 5, 1920, ch. 235, 41 Stat. 922, Sundry Civil Appropriation Act, Mar. 4, 1921, ch. 161, 41 Stat. 1411, and State, Justice, and Judiciary Appropriation Acts, June 1, 1922, ch. 204, sess. II, 42 Stat. 613, and Jan. 3, 1923, 42 Stat. 1080, respectively), were made contingent upon no part of the moneys being—

"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

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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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.

ENFORCEMENT.

SEC. 4. The several circuit 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 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.[a]

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.

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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 subpœnas 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 to be 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.

[a] 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. 532.

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: *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.

Vendor may select own customers if not in restraint of trade.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.[4]

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[5] 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

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[4] 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. 532.

[5] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

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.

Prima facie evidence against same defendant in private litigation.

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[6] 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 de crees are rendered before any further testimony is taken.

Consent judgments or decrees excepted.

Running of statute of limitations with respect to private rights suspended pending proceeding by the United States under antitrust laws.

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.

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.

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.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws[6] 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

[6] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

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.[7]

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.

[7] 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. 532.

It should be noted also that corporations for export trade are excepted from the provisions of this section. (See p. 556, 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.

Common carriers excepted with reference to branch or tap lines where no substantial competition.

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,[8] nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Existing rights heretofore lawfully acquired not affected.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.[9]

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

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over $5,000,000.

[8] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

[9] By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, 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

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.

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

Savings banks without capital (share) stock excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

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. 532.

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.[10]

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.[11] 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.

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[10] 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.

[11] For text of Sherman Act, see footnote on pp. 533–535. As enumerated in Clayton Act, see first paragraph thereof on p. 532.

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.

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.

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.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

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.

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.

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.

Penalty.

Effective date extended to Jan. 1, 1921.

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.[12]

Except as to corporations organized after Jan. 12, 1918.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.[13]

Jurisdiction as respectively applicable vested in— Interstate Commerce Commission; Federal Reserve Board; and Federal Trade Commission.

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:

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.

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

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[12] Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 456 at 499.

[13] 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. 532.

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 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.

Introduction of additional evidence may be permitted on application, and showing of reasonable ground for failure to adduce theretofore.

Commission or board 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.

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.

Jurisdiction of Court of Appeals same as on application by commission or board and commission's or board's findings similarly 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.[14]

Proceedings to have precedence over other cases, and to be expedited.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone 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.

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[14] 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. SUBPŒNAS 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 subpœnas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or crimi-

[14] For text of Sherman Act, see footnote on pp. 533–535. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 13. SUBPŒNAS FOR WITNESSES IN PROCEEDINGS BY OR ON BEHALF OF THE UNITED STATES UNDER ANTITRUST 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[15] may run into any other district: *Provided*, That in civil cases no writ of subpœna 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 ANTITRUST 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,[15] 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 therefor 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.

[15] For text of Sherman Act, see footnote on pp. 533–535. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

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 subpœnas 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,[16] 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: *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.

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.

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.

[16] For text of Sherman Act, see footnote on pp. 533-535. For Antitrust Acts as enumerated in Clayton Act, see first paragraph thereof on p. 532.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

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.

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.

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.

Sec. 263 of Judicial Code 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. 266 not affected.

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 misdeameanor; 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.

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

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.

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States,

And other cases not in sec. 21.

Punished in conformity with prevailing usages at law and in equity.

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.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

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.

But to be confined to clause, sentence, etc., directly involved.

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.[1]

[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,[2] 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.

[1] 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 *Ex Parte Lamar*, 274 Fed. 160 at 171, this act appears as yet neither to have been involved in nor referred to in any reported case.

[2] For text of Sherman Act, see footnote on pp. 533–535.

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,[3] 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,[4] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in ex-

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[3] See *ante*, p. 532 et seq.

[4] See *ante*, p. 519 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.

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.

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.

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.

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 mangement 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.

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.

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."[5]

Approved, April 10, 1918.

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[5] See *ante*, p. 519 et seq.

APPENDIX II.

DECISIONS OF THE COURTS IN CASES INSTITUTED AGAINST OR BY THE COMMISSION.[1]

L. B. SILVER CO. v. FEDERAL TRADE COMMISSION.[2]

(Circuit Court of Appeals, Sixth Circuit. February 16, 1923.)

No. 3648.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—FINDING ADVERTISED OPINION AS TO BREED OF HOGS WAS NOT TRUE HELD NOT TO ESTABLISH UNFAIR COMPETITION.

   Where the evidence before the Trade Commission showed an honest difference of opinion between experts as to whether the stock from which respondent bred its hogs was a separate breed, or only a different strain of the same breed, a finding that an advertisement that it was a separate breed was false does not establish unfair competition with breeders of the other breed, since dealers generally are familiar with the facts and would not be deceived thereby, and therefore an order requiring it to desist from making such statements in its advertisements will be modified by eliminating that provision.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—DEFINITION OF UNFAIR METHODS OF COMPETITION IS QUESTION FOR THE COURTS.

   Since Federal Trade Commission Act, paragraph 5 (Comp. St. par. 8836e), does not define the term "unfair methods of competition" thereby prohibited, the definition of that term is a question for the ultimate determination of the courts.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—PUBLIC POLICY DECLARED IN SHERMAN ACT CONSIDERED IN DEFINING UNFAIR COMPETION.

   In determining the meaning of unfair methods of competition, as used in the Federal Trade Commission Act (Comp. St. par. 8836a et seq.), a court must give due consideration to the public policy declared in the Sherman Antitrust Act (Comp. St. par. 8820 et seq.).

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—ORDER TO DESIST FROM ADVERTISING WEIGHT OF TWO HOGS HELD UNSUPPORTED BY COMPLAINT OR FACTS.

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[1] The period covered coincides with that of this volume, namely, Feb. 14, 1923, to Nov. 4, 1923. During this period it may be noted, however, that the Supreme Court, pursuant to stipulation and at the instance of the Commission on Apr. 9, 1923, dismissed the writ of certiorari in the case of *Fruit Growers Express, Inc.*, v. *Federal Trade Commission*, 274 Fed. 205 (also reported in 3 F. T. C. 628), for the reason that the question there presented had become moot (261 U. S. 629). Reference should also be made, in connection with cases involving the administration of the Federal Trade Commission Act, to the case of *United States* v. *Lee*, decided May 28, 1923, 290 Fed. 517, affirmed in *Sherwin et al.* v. *United States*, 297 Fed. 704, dealing with the question of the extent and application of immunity provisions of that act.

[2] For denial of Commission's motion to recall mandate, and to issue injunction, see 292 Fed. 752; also set forth *infra* at p. 608.

In an order issued by the Federal Trade Commission against a company engaged in the breeding and sale of hogs, a paragraph requiring it to desist from advertising that two of its hogs weighed 2,806 pounds, in such a way as to mislead a prospective purchaser to believe those hogs were then or recently had been in existence, was unsupported by the complaint, which contained no charge that respondent advertised it had for sale the progeny of those hogs, and by the facts showing that the advertisement was first made in 1883, and that excessive weight hogs were not desirable or used for breeding purposes.

(The syllabus is taken from 289 Fed. 985.)

Complaint by the Federal Trade Commission against the L. B. Silver Co., charging the respondent with using unfair methods of competition in interstate commerce. On petition by the company to revise an order of the Commission requiring the company to desist from certain statements in its advertisements. Order modified.

John G. White, of Cleveland, Ohio (White, Cannon & Spieth, of Cleveland, Ohio, on the brief), for petitioner.

Charles Melvin Neff and W. H. Fuller, both of Washington, D. C., for respondent.

Before Knappen, Denison, and Donahue, Circuit Judges, Denison dissenting in part.

In March, 1920, The Federal Trade Commission issued a complaint against the L. B. Silver Co., a corporation, charging the respondent with using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, creating the Federal Trade Commission. (Compiled Statutes 8836a et seq.)

The complaint alleged in substance that the respondent had made and was continuing to make false representations to the public that it is a breeder and shipper of thoroughbred hogs; that the Ohio Improved Chesters or famous O. I. C. hogs is a breed of hogs separate and distinct from the Chester White hogs and superior thereto; that it advertised Chester White hogs for sale at a price less than that for which it would sell O. I. C. hogs and would either fill orders for Chester White with inferior animals of the hogs bred by it, or notify its customers that it had no Chester Wh te hogs; that the O. I. C. hog is not susceptible to cholera, pneumonia and other diseases and possesses a power to repel diseases in a degree unknown to other breeds; that it had secured greatly reduced express rates on livestock and had advertised that two of the O. I. C. breed of hogs weighed 2,806 pounds, in such a way as to mislead prospective purchasers into believing that two O. I. C. hogs weighing that amount were then or recently had been in existence.

The amended answer alleged in substance that the petitioner is a breeder of Ohio Improved Chester White hogs, familiarly known to the trade as O. I. C. hogs; that the O. I. C. hogs are a separate and distinct breed from the Chester Whites and superior thereto; that since December 1, 1918, it has voluntarily and permanently discontinued all advertising to the effect that it would sell Chester White hogs at a price less than that for which it would sell O. I. C. or at any other price and denied that it had represented the O. I. C. breed was not susceptible to cholera and other diseases, but that it had in good faith represented that it is less susceptible to disease than other breeds, but that it would not guarantee its hogs to be immune therefrom; that it had never represented that its hogs are not subject to pneumonia, but that it did represent that there had been no cholera, foot-and-mouth or other contagious disease in petitioner's locality for over fifty years and that during that period of time it had never lost a pig from cholera or any other contagious disease, and that these representations are true.

The amended answer further avers that since the first day of January, 1918, the petitioner voluntarily and permanently discontinued all representations as to reduced or special express rates and admits that it advertised that two of petitioner's breed of hogs weighed 2,806 pounds, but denies that such representations were so made as to mislead a prospective purchaser, and that if they were ever so used as to be in the present tense such advertising had been voluntarily discontinued many years ago.

Upon the issue so joined the Federal Trade Commission made separate findings of fact and made and entered a modified order that the respondent, its officers, directors, agents and employees cease and desist from representing, in interstate commerce, to the public, by circulars, pamphlets, catalogues, trade journals, periodicals, newspapers or otherwise:

1. That the so-called Ohio Improved Chesters, or O. I. C.'s, or Famous O. I. C.'s, are a breed of hogs separate and distinct from the Chester White breed of hogs.

2. That it has no Chester White pigs when in fact it has Chester White pigs, though called by it O. I. C. pigs; or that it has Chester White pigs and O. I. C. pigs as if the latter were a different and more valuable breed, when in fact they are one and the same breed; or that it has no Chester White pigs with which to fill orders for Chester White pigs, at its quoted prices or otherwise, when in fact it has Chester White pigs, though called by it O. I. C. pigs; or that it has discontinued to breed Chester White pigs, when in fact it is continuing to breed them, though designated by it O. I. C. pigs.

3. That the so-called O. I. C. pigs, as a breed, or otherwise, are not liable to cholera, foot-and-mouth disease, tuberculosis, and other contagious diseases; that there has been no cholera, foot-and-mouth disease, tuberculosis nor other contagious diseases in respondent's locality; that the O. I. C. pigs possess a power to resist disease in a degree unknown to other breeds; that in localities where contagious diseases have swept off the dark and black hogs the O. I. C.'s were unaffected; from in any way representing to the public that the O. I. C. pigs are more resistant to disease than are other breeds of hogs.

4. That in the shipment of livestock the respondent enjoys or has enjoyed, either or both, from express companies rates of transportation lower than the rates granted to other shippers of live stock by the said express companies.

5. That two of its hogs weigh 2,806 pounds, that such hogs are in existence, that their progeny is for sale by the respondent.

DONAHUE, *Circuit Judge* (after stating the facts as above):

The petitioner is a corporation and the successor in business of the partnership of L. B. Silver & Son, which partnership was the immediate successor in business of L. B. Silver, who for many years was a successful breeder of cattle, horses, and hogs. In 1863, in Ohio, L. B. Silver undertook to improve the Chester White hog that had originated in Pennsylvania.

It is claimed by the petitioner that L. B. Silver in his initial efforts to improve the Chester White hogs, crossed that stock with a mammoth or large white English hog. This, however, is disputed. Silver is dead. There was at that time no herdbook for either the O. I. C. or the Chester White hogs, and for that reason this disputed question is not susceptible of direct proof, but must rest on tradition only. But this tradition finds some support not only in the testimony of witnesses to whom L. B. Silver made this statement, but also in a pamphlet written and distributed by him in 1870, in which appears the following statement:

In-and-in breeding is recommended by some, but our observation goes to show that it should not be practiced to any great extent, as its tendency is to weaken the constitution of the future animal.

The claim that he crossed the Chester White stock with a mammoth or large white English hog is entirely consistent with this advice to other breeders contained in this pamphlet, entitled "Hints to Stock Breeders." However that may be, the Commission found that from the very beginning of L. B. Silver's business, and down to the present time, the respondent and its predecessor in business never used boars of any breed other than the pure Chester White, and for the purpose of this case that finding of fact by the Commission will be accepted as final and conclusive.

Regardless, however, of whether L. B. Silver originally crossed this stock with a mammoth or large white English hog, there is no conflict in the evidence that by careful selection and systematic mating he did accomplish a substantial improvement in the original stock and that the result of his efforts was a valuable contribution to progress in swine breeding.

In 1870 L. B. Silver issued the pamphlet, " Hints to Stock Breeders," to which reference has heretofore been made. In this pamphlet he made public and definite claim that the hogs bred by him were a distinct breed from the Chester White, which he had named Ohio Improved Chester White breed, now known as the Ohio Improved Chester, or O. I. C. It further appears from the evidence that L. B. Silver, his successors in business, including this petitioner and many other O. I. C. breeders for a half century prior to the filing of this complaint, have openly, notoriously, and persistently made the claim that the Ohio Improved Chesters are a separate and distinct breed of hogs from the Chester White and no action was taken by anyone interested therein to challenge the truth of this claim until 1916, and again in 1918, when complaints were made to the postal authorities. Each of these complaints failed in the accomplishment of its purpose.

While these claims, no matter how long made, can not change the facts, nevertheless they are of importance in determining the question of unfair methods of competition in this respect.

It further appears from the evidence that other breeders, either inspired by Silver's success, or acting upon their own initiative, have developed what is known as the " Modern Chester White," which is also a decided improvement over the foundation stock. While it is conceded that the present O. I. C. hog is superior to and has many marked characteristics with power to transmit the same, that distinguishes it from the Chester White as it existed in Pennsylvania and New York in 1863, nevertheless, it is insisted that the comparison should now be made between the Modern Chester White instead of with the original stock. The further claim is made that the O. I. C. hog has no characteristics that distinguishes it from the Modern Chester White. Upon this question there is a serious conflict in the evidence.

There is also a sharp and irreconcilable conflict in the expert opinion evidence touching the question as to what constitutes a distinct and separate breed, but disregarding the claim of the petitioner that L. B. Silver crossed Chester Whites with a mammoth or large white English hog, there is practically no substantial conflict in the evidence tending to establish the facts from which these breeders and experts reach different conclusions. One group of experts and breeders are of the opinion that there can not be a distinct breed originated where the blood line goes back to the old foundation stock; that while different strains or types may be developed in this way, that it is nevertheless the same breed. Another group of breeders and experts are of the opinion that a distinct breed may be originated through selection and in-and-in breeding. Each of the individual members of these groups that have testified in this case or whose book on live-stock breeding have been admitted in evidence, though differing in opinion based on the same state of facts, appears to be entirely honest, sincere, and equally firm in the belief that his conclusion is the right one.

The situation presented by this conflict of opinion among experts and breeders is fully discussed and its effect determined by the Supreme Court in the case of *American School of Magnetic Healing* v. *McAnnulty*, 187 U. S. 94. In *Bruce* v. *U. S.*, 202 Fed. 98, the court of appeals held that it was error for the trial court to refuse to charge that "* * * if the jury found that whether the substance was remedial in character when exhibited as part of the treatment of morphinism was merely a matter of opinion among medical men, defendants must be acquitted of the charge of using the mails for fraudulent purposes." It was also held by this court in the case of *Harrison* v. *U. S.*, 200 Fed. 662, 665, that a scheme to defraud "can not be found in any mere expression of honest opinion."

As heretofore stated, in the early years of Mr. Silver's activities as a breeder of swine there was no herdbook for either the Chester White or the Ohio Improved Chester White. When a herdbook known as the "National Chester White Swine Record" was established Mr. Silver recorded his hogs in its book, but at the same time insisted that his doing so should not be regarded as a surrender of his claim to a distinct breed. Later, when "The International Ohio Improved Chester Breeders' Association" was organized, Mr. Silver recorded his hogs in its book. In 1897, after this organization ceased to function, an organization known as the O. I. C. Swine Breeders was formed and established a herdbook, in which was eligible to registry only swine that could trace its origin to the L. B. Silver herd. At the time this complaint was filed there were registered in this herdbook about nine hundred and fifty thousand hogs, tracing their ancestry to the Silver herd, and but ninety thousand hogs registered in the herdbooks of the three Chester White associations. There is also evidence tending to prove that there are about twenty thousand O. I. C. breeders, all of whom claim and advertise that it is a separate and distinct breed.

It further appears from the evidence that the O. I. C. hogs were classified as a separate breed of hogs by many stock journals and publications of like nature, including scientific books on stock breeding. While it is true that some of these editors and authors relied upon the claims and representations made by Silver and his successors, yet others made independent investigation of the facts upon which they based their conclusions.

There is also substantial evidence in this record tending to prove that there is no sharp distinction between the term "breed" and "strain" as used by geneticists, and that these terms are used indiscriminately by a great many breeders, so that in so far as concerns the disposition of this case it is not of controlling importance whether the one group of experts are correct in their opinion that the O. I. C.'s are but a strain of the Chester White or the other group are correct in the opinion that it is a distinct and separate breed.

Aside from these considerations it is apparent from the evidence in this case that this controversy does not vitally concern the general purchasing public. On the contrary, it is a controversy largely between rival breeders of hogs, or more particularly between rival hog breeders' associations having and maintaining herdbooks. If the O. I. C. hogs were inferior to the Chester Whites and not of their breed and the petitioner advertised them as Chester Whites, such practice would, no doubt, constitute unfair competition as against Chester White breeders, but it is admitted that not only are the O. I. C. hogs superior to the Chester White hogs of 1863 but that they are the equal of the Modern Chester Whites. That being true, it necessarily follows that neither the general public as consumers nor the small part of the public engaged in the breeding of swine and particularly in the breeding of O. I. C. and Chester White swine can be misled to their prejudice by this claim of the petitioner, nor induced thereby to purchase a hog inferior to the Modern Chester White. Whether the O. I. C. should or should not be classed or designated as a different and distinct breed, and whether they are or are not superior to the Modern Chester Whites, is a question that each breeder will decide for himself and he will not change his individual opinion upon this subject no matter what this court or scientific experts on breeding may determine to be technically essential to the origination of a new and distinct breed. There is evidence in this record tending to prove that breeders pay little or no attention to scholastic experts who are designated by them as "book men" dependent upon breeders having actual experience for the data upon which they base their conclusions.

For the purpose of this case it may be conceded that the conclusion reached by the Federal Trade Commission from the facts found by it that the O. I. C. and Chester White hogs are one and the same breed is a finding of fact within the meaning of section 5 of the Federal Trade Commission Act, and, as such, equally conclusive as other findings of fact made by that commission. But in view of the fact that there is a substantial conflict of opinion upon this subject, as evidenced by the testimony not only of scientific men but also by the testimony of practical and experienced breeders of swine, it does not necessarily follow from this finding that the assertion of an honest opinion upon this subject either by way of advertisement or otherwise by any one breeder or number of breeders constitutes unfair methods of competition where the facts upon which such opinion is based are generally known to that part of the public concerned in the controversy, even if it should appear from a scientific standpoint that such opinion is not technically correct.

The statute does not define the term "unfair methods of competition"; therefore the question is one for the ultimate determination of the courts, as are the phrases "unsound mind," "undue influence," "unfair use," "due process of law," found in many other statutes. *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427; *Sears, Roebuck & Company* v. *Federal Trade Commission*, 258 Fed. 307, 311. In determining the meaning of "unfair methods of competition" within the meaning of the Federal Trade Commission Act, a court must give due consideration to the public policy declared in the Sherman Act. *Federal Trade Commission* v. *Beechnut Packing Co.*, 257 U. S. 441, 453, and cases there cited.

In the case of the *Federal Trade Commission* v. *Winsted Hosiery Company*, decided by the Supreme Court, April 24, 1922,[1] the Winsted Hosiery Co. placed upon the cartons in which its underwear was sold the brands or labels "Natural Merino," "Gray Wool," "Natural Wool," "Natural Worsted," or "Australian Wool," but none of this underwear was all wool, and much of it contained as little as ten per cent.

The Supreme Court held that these brands and labels are literally false and all except the label "Merino" palpably so. That all are calculated to deceive, and do in fact deceive a substantial portion of the purchasing public, and therefore the proceeding to stop the practice was in the interest of the public. The court further found that the practice of using these brands and labels also constituted an unfair method of competition as against manufacturers of all wool and knit underwear and as against those manufacturers of mixed wool and cotton underwear who brand their products truthfully.

Section 5 of the Federal Trade Commission Act authorizes the filing of a complaint when such proceedings would be to the interest of the public. Whether the Federal Trade Commission has jurisdiction to determine complaints as to unfair methods of competition where the general public, the ultimate consumer, is not misled, deceived or prejudiced thereby, but involves only a controversy between dealers and breeders, is a question unnecessary to decide in this case.

The claim that the O. I. C. hog is a separate and distinct breed from the Chester White is neither palpably nor literally false, as were the brands and labels used by the Winsted Hosiery Co. On the contrary, the truth of this claim finds equal support in the testimony of expert and experienced breeders, as does the claim that it is false and unwarranted by the facts. Nor does the claim tend to lessen competition or create monopoly in violaton of the antitrust act. On the contrary, it places the O. I. C. hog in direct competition with the Chester White. On the other hand, if the O. I. C. are required to be advertised and marketed as Chester Whites the tendency of such requirement would be to destroy competition and create a monopoly in the breeding and marketing of Chester Whites.

For the reasons above stated, a majority of this court is of the opinion that the petitioner is not guilty of unfair methods of competition by advertising the O. I. C. hog as a separate and distinct breed of hogs from the Chester White so long as it does not include in its advertisements the claim found to be untrue by the Federal Trade Commission that the foundation stock of the O. I. C. was crossed by a mammoth or large white English hog.

Paragraph 2 of the order to cease and desist as it now reads is inconsistent with paragraph 1 as above modified. In the opinion of a majority of this court, paragraph 2 should be changed to read as follows:

> That it has Chester White pigs for sale at a less price than O. I. C. pigs or at any other price, if it in fact has no Chester White pigs, as distinguished by it from O. I. C. pigs, for sale at quoted prices or otherwise.

There is substantial evidence in this record to sustain the findings of facts upon which paragraphs 3 and 4 of the modified order to cease and desist are predicated, and these paragraphs are approved.

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[1] 258 U. S. 483.

Paragraph 5 is based solely upon paragraph 7 of the complaint. That paragraph charges in substance that respondent advertised that two O. I. C. hogs weighed 2,806 pounds, in such a way as to mislead a prospective purchaser to believe these hogs were then, or recently had been, in existence, whereas said representations refer to hogs which are alleged to have existed in the year 1868. There is no charge in the complaint that respondent advertised that it had for sale the progeny of these hogs. It follows that the allegations of this complaint do not support this paragraph. In view of the undisputed evidence that this claim was made in the advertising as early as 1883; that its truth is not challenged by complaint or evidence; that excessive weight hogs are not desirable or used for breeding purposes; that some years before the filing of this complaint, when respondent's attention was called to the fact that its advertisement read, "Two hogs weigh 2,806 pounds," it at once changed this to read, "Two hogs weighed 2,806 pounds," and it has continued so to read ever since, it would not appear that this would involve public interest or constitute unfair methods of competition. In any event, the evidence tending to prove that the respondent had in good faith abandoned this form of advertising long prior to the filing of this complaint is not disputed by oral evidence or by circumstances. In the opinion of a majority of the court, the fifth paragraph of the modified order to cease and desist should be vacated.

It is unnecessary to discuss in detail the other questions presented by the petition to review in reference to hearsay evidence, leading questions, the admission of opinion testimony as to the ultimate fact to be decided by the commission and other similar questions of a more or less technical nature. It is sufficient to say that from the whole record it does not appear that the substantial rights of the petitioner have been prejudiced in any way by these alleged errors.

The first and second paragraphs of the order to cease and desist made and entered by the Federal Trade Commission will be modified to the extent hereinbefore stated and as so modified, approved. Paragraphs 3 and 4 are approved as written without change or modification thereof. Paragraph 5 is vacated.

DENISON, *Circuit Judge*, dissenting in part:

While I concur generally in the opinion of Judge Donahue as far as it goes, I see both the need and the occasion for a study of the scope and extent of the Commission's power along the line here involved, under section 5 of the act.

In this matter, as in many others currently familiar, the Commission has adopted the theory that the "unfair methods of competition" denounced by section 5 include all false, not to say unethical, advertising and promotion of a particular article by which that fraction of the public desiring to purchase an article of that class may be, in a substantial way, misled. The vista of business censorship seen through such an opening is limitless. It extends to the advertising of fire sales when there has been no fire, and of cut price sales when there has been no cut—provided sales are to be made across a State line. Such suggestions are not fancifully extreme. In the present case, thousands of pages of testimony have been taken, thousands of dollars of expense incurred, for the Government and for the respondent, and the time and attention of the Commission and of the Circuit Court of Appeals consumed to the total extent of many days—all over questions of porcine genealogy and eugenics. In another recent case, before the Commission and another Circuit Court of Appeals, a similar amount of effort was expended concerning the truthfulness of advertising claims to merit in a medicinal condiment for live stock—the order to desist prohibiting, among other things the use of a fictitious testimonial. *Guarantee Veterinary Co.* v. *Federal Trade Commission* (C. C. A. 2), 285 Fed. Rep. 853.

I do not believe that the Federal Trade Commission was created for any such purpose, or that the time and efforts of the Federal courts should be devoted to such situations.

A study of the Congressional Record convinces me that the Federal Trade Commission Act was wholly collateral to the Sherman and other antitrust acts, and that the "unfair methods of competition," intended to be reached by section 5, are only such methods as tend toward that monopoly or restraint of competition which the antitrust acts prohibit. The act was the ultimate result of House bill 15613, in the second session of the 63d Congress, introduced by Mr. Covington on April 13, 1914, and it was the often declared partial fulfillment of the general antitrust program adopted by both parties in the previous political campaign, and specifically laid before Congress for its attention by the address of President Wilson on the subjects of trusts and monopolies, made January 20, 1914. Several other bills of more or less similar purport were introduced and referred, as this one was, to the Committee on Interstate and Foreign Commerce, or, as others were, to the Judiciary Committee. The committee reports and congressional debates, which from this beginning led up to the act as finally passed, cover nearly a thousand printed pages. They have all been read, with reasonably careful attention. Absolute inerrancy of review and inference can not be claimed, but with reasonable certainty it may be said that the theory that the Commission was being endowed with powers and duties which went beyond the scope of the underlying purpose of the antitrust acts was never accepted by either House of Congress:

The chief controversy on the general subject was between those who wished to create a commission only for investigation and publicity and those who wished a commission "with teeth." House bill 16513, as introduced and as reported out by a majority of the committee, was of the former class. It contained provisions for reports by interstate corporations, for investigations, for publicity, and for aiding the courts when a dissolution was decreed under the antitrust laws. It contained nothing resembling the present section 5. The majority report said that—

> The bill provides for an Interstate Trade Commission in accordance with the views of the President, expressed in his message to Congress in January last, on the subject of trusts and monopolies.

The Republican members of the committee (then in a minority) expressed their "general concurrence" in the majority report, pointing out that they regarded it as a fulfillment of the Republican Party platform pledge. Mr. Lafferty presented a minority report, vigorously protesting against the lack of any sufficient power in the Commission to do anything effective in aid of antitrust laws. It is made apparent in this minority report, as repeatedly in other places, that the bill was a companion to the one which, at the same session, became the Clayton Act; and that, with one bill extending and defining antitrust laws, and with another creating a suitable commission for their enforcement, the administration antitrust program was fulfilled. In another minority report, Mr. R. B. Stevens also objected because sufficient powers were not given. His report refers to another bill, introduced by him, H. R. 15660, which was afterwards used in the Senate as the basis of the later formulated section 5; and the Stevens report thus gives the key to the true definition of section 5 when it says:

> If we are to rely on the theory of competition to protect the public from large corporations, it is imperative that the Government shall see to it that competition is on fair and equal terms. The experience the Government has had in the enforcement of the Sherman antitrust law, interstate commerce law, and the pure food law, proves conclusively that this can be done successfully only through an administrative board having general power to prevent unfair competitive practices.

This bill, substantially as reported, passed the House, went to the Senate, and was referred to the Interstate Commerce Committee. It reported out a substitute which made a number of changes, not now important, as to the examining, publicity, and dissolution-aiding features, but added section 5 in its present form, except for certain changes to be later noted.[3]

In its report (p. 11090, vol. 51, Cong. Rec.) the committee discussed the general purposes of the bill as a collateral antitrust act. In explaining section 5, the report says:

> The committee was of the opinion that it would be better to put in a general prohibition condemning unfair competition than to attempt to define the numerous unfair practices, such as local price cutting, interlocking directorates and holding companies, intended to restrain substantial competition.

The debates in the Senate cover four hundred pages of the record (scattered from p. 10376 to p. 13319, pts. 12 and 13, vol. 51, Cong. Rec.), and are devoted largely to the meaning of "unfair competition." The opposition to this section was mainly upon two grounds: First, that "unfair competition" was of such vague and indefinite meaning that giving a commission power to prohibit would be a delegation of legislative power; second, that the phrase, by long judicial construction, meant, and meant only, "palming off" the goods of one as those of another, and on that subject no additional law was needed. The advocates of the section generally insisted that "unfair competition" was those practices which tended to destroy competition, and so tended to monopoly, and that the general character of these practices had been so well defined by the Supreme and other courts in the antitrust cases that the phrase was no longer unduly vague. What Senator (formerly circuit judge) Colt believed was the dominant thought, he formulated, when stating the different views that might finally be taken, as follows (p. 13154):

> Fourth. A court may take the view * * * that it was plainly the intention of Congress to use these words in the broad sense of comprising the various steps which lead up to monopoly, and hence, that "unfair competition" within the meaning of the law, signifies the various things which have been forbidden by the courts in decrees entered under the antitrust laws and all transactions

[3] In the debates it is stated (e. g., p. 11538) that this Section 5 was brought to the committee by Mr. Stevens, as founded on his H. R. 15660, and as said to have been urged by Mr. Brandeis and to have been approved by the President.

of a similar nature. That such was the intention of Congress, a court may say, clearly appears from the arguments in the Senate. And in support of this construction it may be further urged that Congress was engaged in a general scheme of legislation supplementary to the Sherman law, and hence that it intended that these words should cover all those transactions which any person may employ in a scheme or plan to establish a monopoly in violation of law.

It is not easy to say just how far quotations from the debates themselves are admissible as evidence of intent. Senator Newlands was the chairman of the committee, Senator Cummins, a leading member, and they and most of the advocates of the bill spoke in explanation of the committee report. The line between this and mere debate is not easy to draw. In reporting the substitute, containing this section 5, Senator Newlands said (p. 10376):

The need has long been felt for an administrative board which should act in these matters in aid of the Sherman antitrust law.

Senator Cummins said (p. 11103):

The unfair competition sought to be reached by the section (5) is that violence of competition, conducted through unfair practices and methods, which will ultimately result in the extinction of the competition and the establishment of monopoly * * * (p. 11105). We are here endeavoring to sustain competition * * * it is the only justification for the establishment of a trade commission. * * * We have chosen to report a rule for the trade commission in the language which has been suggested, viz, "unfair competition." It is that competition which is resorted to for the purpose of destroying competition, of eliminating a competitor, and of introducing monopoly. That is the "unfair competition" which this bill endeavors to prevent.

Seemingly authoritative statements of the same kind were too numerous for inclusion here. Some of them are collected in the margin.[3] The contentions that the phrase had any other meaning came from those who opposed the section because they thought the phrase covered nothing but "palming off" or because they thought it covered everything. Nothing is found from its supporters indicating the possibility of any definition broader than Senator Cummins's, except occasional broad language followed by some narrowing specification.[4] There was universal agreement, frequently ex-

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[3] Senator Newlands (p. 11108) enumerates at length "the practices which are generally considered unfair." They all have to do with fraud or force used to destroy a competitor. He also said (p. 11235): "The provision with reference to unfair competition is intended to disarm monopoly. It is monopoly, or the corporation possessing monopolistic tendencies, that engages in unfair competition, and unfair competition is a means of creating monopoly." He further stated (p. 12030), the purpose of section 5 to be to "afford protection to numerous pigmies in business, that are being injured and destroyed by giant competitors, whose practices, while leading up to monopoly, do not as yet have the character of monopoly."

When Senator Williams (p. 12210) said: "What is really meant in the bill, when it says 'unfair competition,' is the unfair stifling of competition." Senator Newlands replied (p. 12211): "I want to do the same thing * * * to prevent the stifling of competition by unfair means. * * * Those who support the bill have presented authorities * * * showing that the words 'unfair competition' have the very meaning of stifling competition by unfair means."

Senator Cummins said (p. 11381): "The bill is in harmony with the purposes of the antitrust statute. It has no other office except to render the principle of that statute more effective than it now is." He supposed (p. 11105) it would not apply to the case of one railroad misrepresenting the facilities of another, and so diverting custom. His further explanation (p. 11455) quoted at length in 253 U. S. 435, q. v., are informing.

Senator Kenyon said (p. 13156): "The difference between this act and the Sherman Act * * * this can take hold of matters that are not in themselves sufficient to amount to a monopoly or to amount to a restraint of trade.

Senator Hollis said (12146): "If the proposed trade commission has its attention called to some unfair method of competition, it can immediately investigate, and if it decides that it is unfair competition, and may lead to monopoly or restraint of trade, it can prohibit it."

[4] For examples, see Senator Newlands's rather inclusive words (p. 11112) and his interpreting enumeration (p. 11118); and Senator Robinson's corresponding expressions (pp. 11228, 11230) but then naming "nearly all the methods of unfair competition now in use."

pressed, that the bill was not intended to reach private controversies between rival traders.

True, it is not without importance that amendments were proposed, and defeated, expressly defining "unfair competition" along the lines of Senator Cummins's explanations (pp. 13303–13314; 13325–13335). The record indicates no objection to the declared purpose of those proposing these amendments, but rather that their defeat was due to suspicion of amendments from "the enemies of the bill," fear that the restrictive definitions were imperfect, and knowledge that the bill would go to conference, where amendments could be made.

So it passed the Senate with section 5 prohibiting "unfair competition," and containing no express limitation to cases of public interest. The House refused to concur, and conference managers were appointed by both Houses. The conferees reported a substitute bill which (as to the matters now here involved) was like that passed by the Senate, except that section 5 was amended by changing "unfair competition" to "unfair methods of competition" in the prohibitory clause, and that there was inserted the clause found in the final act and reading "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 Senate conference managers reported the changes made. There was little debate or comment. No reference is found to any supposed change in the prohibition of section 5. The conference bill was passed.

The House conference managers made a report, explaining section 5, which had been added. The report said (p. 14924):

> Section 5 declares unfair methods of competition to be unlawful, and empowers the Commission to order a discontinuance of such methods. It is now generally recognized that the only effective means of establishing and maintaining monopolies * * * is the use of unfair competition. The most certain way to stop monopoly at the threshold is to stop unfair competition.

Mr. Covington, one of the House conference managers, and chairman of the subcommittee in charge of the bill, while explaining section 5 said (p. 14927):

> This section * * * embraced within its broad and elastic scope all the specific practices against which there had been prohibitions in the Clayton bill. * * * The most certain way to stop monopoly at the threshold is to prevent unfair competition. This can be best accomplished through the action of an administrative body of practical men. * * *

And (on p. 14929):

> We are seeking here, not to enter into any unknown or speculative realm of the law, but to deal, as we ought to deal, with those practices of unfair trade in their incipient stages which, if left untrammeled and uncontrolled, become the acts which constitute in their culmination, restrant of trade and monopoly.

As to the inserted "public interest" clause he said (p. 14930):

> This prevents the Commission from becoming a clearing house to settle the everyday quarrels of competitors, free from detriment to the public, which should be adjusted through the ordinary processes of the courts.

Mr. Stevens, also a manager and of the committee, said (p. 14934):

> It [the bill] does not do away with the Sherman law. It is a method of enforcing it and making it more effective, and preventing its misuse.

On p. 19433 he said:

* * * with this jurisdictional qualification carefully stated in the bill, that the Commission has no authority to act unless the methods of unfair competition shall injuriously affect the public interest. That must be the basis of its action and jurisdiction. In that way the Commission will be freed from private quarrels and controversies.

The two amendments made in conference can be traced back in the record and measurably interpreted by it. In meeting the objection that "unfair competition" would mean "palming off," and nothing else, Senator Hollis, of the committee, said (p. 12145):

If * * * the words "unfair competition" have a peculiar and limited meaning applicable only to the substitution of one man's goods for another's * * * it is very easy to separate the two words, "unfair" and "competition," so that they will not become mixed with (that) particular sort of methods. * * * It would be very easy to make the operation of this act certain by specifying that * * * unfair methods of competition * * * are prohibited. Therefore, * * * I suggest—and I hope the chairman of the committee will consider the suggestion and agree to it—that the words "unfair" and "competition" be separated by some word that will not do them any harm, such as "oppressive," or "methods of," so that there will not be the particular label that has been attached in many cases * * *.

Apparently the conferees adopted this suggestion.

Commenting on and repeating the frequent assertion that the law was not intended for those acts of competition, unjustifiable as between traders, for which existing laws gave remedy, Senator Cummins, in the course of the main discussion, said (p. 13151):

The unfair competition with which the public is concerned is unfair competition which is inconsistent with or repugnant to the continuance of competition as a force in the business life of the country.

Senator McCumber said (p. 13304):

There are many practices which might be unfair as between competitors, the result of which is beneficial to the public (as, by forcing lower prices to meet it), and it only ceases to be beneficial to the public when the effect of the competition is such that it destroys one of the competitors.

It was apparently to meet this view that the conference committee made its second amendment, requiring an initial finding of public interest.

This review leads me to the conclusion with which this discussion opened, viz, that the jurisdiction of the Commission is limited to those situations indicating at least substantial tendency to restraint of trade or monopoly. There is, however, another, or second, view not without support in the record. It is that the jurisdiction extends also to cases of "palming off," if the sufficient "public interest" exists. Against this view it is to be noted that such result was foreign to the general purpose of the act, was not called for in addition to existing remedies, and was not urged in reports or debates, as well as that the words "methods of" were inserted for the seeming purpose of avoiding this meaning. For this view, it is to be said that Congress chose a phrase, "unfair methods of competition," that was so analogous to the phrase, "unfair competition," which had been judicially defined as "palming off" that the courts must accept this fixed meaning as indicating one at least of the results accomplished by the law.[5] I come to this again, after considering the course of the judicial decisions.

[5] Particularly some of the discussions in the House, after the section 5 was reported by the managers, lend support to the theory that the "palming off" subject was thought to be within the power granted, when upheld by the necessary public interest.

The act passed in 1914. No case seems to have reached the courts until 1919, when at about the same time the Sears-Roebuck case was decided by the Seventh C. C. A., 258 Fed. 307, and the Gratz case by the Second C. C. A., 258 Fed. 314. The Sears-Roebuck case was typical of the class which, in my judgment, was not intended to be brought within the act. Competitors complained that the Sears-Roebuck Co. promoted the sale of its goods by advertising certain nonexistent merits; there is no suggestion, in the opinion, that the practice tended toward monopoly or restraint of competition; the court evidently assumed, perhaps for lack of any challenge, that "unfair competition" in this act would have the broadest natural meaning as in private controversies between traders—an inference in express conflict with the repeatedly declared purposes of House and Senate. The case was not reviewed by the Supreme Court.

In the Gratz case it appeared that the unfair methods complained of did have to do with a restriction thought to be undue restraint of trade, tending to monopoly. When the case reached the Supreme Court (253 U. S. 421) the majority thought that the practices in question did not unlawfully restrain competition, and hence that the act was not violated. Justice Brandeis, dissenting, thought that the methods used were undue restraint, and he reviewed the origin and purposes of the Trade Commission. He makes it clear that the whole purpose of the act creating the Commission was to aid the antitrust acts. In 1920, in the Asbestos case, Second C. C. A. (264 Fed. Rep. 509), it was held that for one competitor to bribe the employees of another was not an unfair method of competition within section 5, because such practices were not a matter of public interest. Both this decision and the previous one in the Gratz case are based upon the provision of section 5 that public interest must be involved before the Commission proceeds. The court found that there was no public interest of any kind, and so had no occasion to consider the limiting definitions repeatedly made in the House and Senate.

At about the same time the same court considered the Beechnut case, 264 Fed. 885. This again involved a supposed restriction of competition, tending to monopoly. The court thought the facts did not make the restraint unlawful. The whole question considered was whether the methods employed would violate the antitrust act, or, as stated by the court (p. 889), "is whether the method is unfair because it stifles competition and so restrains trade." Judge Manton said (p. 890) "that it was intended by section 5 to prevent practices or methods unfair to the public which, if not prevented, would grow and create monopolies and thus restrain trade and lessen competition." This case was reviewed by the Supreme Court and reversed (257 U. S. 441). The majority of the court thought that the Beechnut methods of price restriction were within the forbidden unlawful restraint of trade; and the reversal was for this reason. Justice Day said (p. 453) that the Trade Commission act "was intended to supplement previous antitrust legislation." The dissent is only as to the unduly restraining character of the Beechnut methods.

Next in order came the National Harness Association case before this court, 268 Fed. 705. We sustained the Commission's order, but the whole complaint was that the methods attacked were part of a plan to suppress competition throughout the trade. Nothing else was involved or considered. The same situation existed in the Gasoline Pump cases, in the second, sixth, and seventh circuits (273 Fed. 478; 274 Fed. 571; 276 Fed. 686), where the practices involved were thought not unduly restrictive, and the Commission's order was vacated. When the Supreme Court came to consider and affirm these cases (April 9, 1923, 261 U. S. 463) its whole discussion is consistent with and, indeed, indicates the idea that the unfair competition contemplated by section 5 is that which unduly restricts competition.

In *Kinney-Rome Co.* v. *Federal Trade Commission*, C. C. A. 7, 275 Fed. 665, it was held that giving a commission to the salesmen of jobbers was not unfair competition. The court, inferentially, made the same assumption as in the Sears-Roebuck case. Other cases, not necessary to cite, have involved merchants' associations' and jobbers' practices—plainly undue restraint of trade, if unfair at all.

With an exception yet to be noted, this recital covers all the judicial decisions under this act which are found up to date. Save for the Sears-Roebuck and Guaranty Veterinary Co. cases, they are all at least consistent with the conclusion that there is no unfair competition under section 5 unless there is a tendency to monopoly. The exception, not yet noticed, is the Winsted Hosiery case. When this was before the Second C. C. A., 272 Fed. 957, there was no occasion to consider whether the statute went beyond undue restriction of competition, since the court concluded that the defendant's acts were not unfair. It was without doubt assumed by the court that the statute did have a broader scope, else the court never would have reached the question which it considered and decided. So far as the report indicates, the contention that section 5 reached only such unfair competition as tended to monopoly, was in no way brought to the attention of the court.[6] The same thing is true as to the treatment of the case in the opinion of the Supreme Court, 258 U. S. 483, though attention was drawn in the argument (p. 489) to the fact that "the purpose behind the act was the regulation of competition," and reference was made to the Senate Report 597. The court found that public deception was caused by the labels and

the facts show that it is to the interest of the public that a proceeding to stop the practice be brought; and they show also that the practice constitutes an unfair method of competition as against manufacturers of all wool knit underwear, and as against those manufacturers of mixed wool and cotton underwear who brand their product truthfully.

The opinion concludes:

As a substantial part of the public was still misled by the use of the labels which the Winsted Co. employed, the public had an interest in stopping the practice as wrongful; and since the business of its trade rivals who marked their goods truthfully was necessarily affected by that practice, the Commission was justified in its conclusion that the practice constituted an unfair method of competition.

Here was a typical case of "palming off" of his goods by one dealer, not as those of another individual but as those of another class. The case must be taken as approving, though *sub silentio*,

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[6] The *Royal Baking Powder* case (C. C. A. 2), 281 Fed. 744, is essentially like the *Winsted* case.

what I have called the second view of the phrase "unfair methods of competition" making it include the fixed judicial definition of "unfair competition," even where there is no tendency to monopoly or undue restriction, except that remote tendency which always exists in every such case—and provided the public interest arises. If, upon full consideration, that court should decide to adopt a more restricted definition, it will not be embarrassed by any contrary, unspoken but necessary, inference from the Winsted case, but all other courts are bound by those inferences.

It is also thereby decided that the public interest does exist under circumstances substantially like those there involved; but it goes no further. It can not—as I think—intend to hold that the public interest may be found merely because a fraction of the public may be misled as to the origin or identity of merchandise advertised for sale. That kind of public interest inheres in every ordinary injunction suit for unfair competition brought by one trader against another; and the public interest clause was inserted expressly to limit the scope of the act and to exclude that kind of controversy. The Winsted case discloses a public interest of that very unusual kind and degree which alone—as I think—can justify a proceeding by the Commission where it is not striking at incipient monopoly. The purchasing public liable to be misled comprised the whole people, and the controversy was about an article of universal use. If a mere "palming off" case, not involving a tendency to crush competition, can ever indicate a public interest sufficient to give the Commission jurisdiction, the Winsted case does.

Not so with the present case. It interests not the whole public, but only those on farms; not all farmers, but only those who are stock raisers; not all stock raisers, but only swine breeders; and not all swine breeders, but only those with predilections for the Chester type. I can not believe there is any statutory public interest in establishing that the "mammoth" hog of early Pennsylvania lived only in fable, and is mythological, not historical. Nor is there any "palming off." Defendant advertises "My goods are better than plaintiff's because they are different." Plaintiff says, "They are not better, they are the same thing." Complaint to a court by such a plaintiff, of such competition is, I think, without precedent. Further, as the opinion of Judge Donahue points out, there is no restraint of competition; quite the contrary.

While I concur in that opinion, both as to reasoning and result, I would go further and vacate entirely the first paragraph of the order to desist.

THE MAYNARD COAL CO. v. FEDERAL TRADE COMMISSION.[1]

(Supreme Court of District of Columbia. March 6, 1923.[2])

In Equity 37659.

COMMERCE—POWER OF CONGRESS TO DEMAND INFORMATION AS TO THE INTRASTATE COMMERCE OR PRODUCTION OF CORPORATIONS ENGAGED IN INTERSTATE COMMERCE—ARTICLES AFFECTED WITH A PUBLIC INTEREST OR NECESSARY FOR THE OPERATION OF AN INSTRUMENTALITY OF COMMERCE.

Power to regulate instrumentalities of interstate commerce does not include power to regulate articles shipped in such commerce; nor does the fact that an article is impressed with a public interest or necessary for the operation of an instrumentality of interstate commerce transfer jurisdiction of its control from the States to Congress, or make it subject to regulation thereby.

OPINION.

BAILEY, *Judge:*

This case comes on upon a motion of plaintiff to strike out the amended answer upon the ground that it raises no defense.

I think that the motion should be sustained. In my opinion no different question is raised from that decided in the case of the *Claire Furnace Company* v. *The Federal Trade Commission*, recently decided by the Court of Appeals.[3]

The defendant attempts to distinguish this case, and refers to the allegations of the amended answer to fact that coal is impressed with a public interest, but the mere fact, if it be true, that coal is impressed with a public interest does not transfer the jurisdiction of its control from the States to Congress. The question is not whether a State may regulate the price and production of coal upon the theory that it is impressed with a public interest, but whether such power has been given to Congress, and I find no such power.

The defendant seems to confuse articles shipped in commerce with instrumentalities of commerce. The power to regulate the latter does not include the power to regulate the former. Nor does the fact that an article is necessary for the operation of an instrumentality of interstate commerce make it subject to regulation by Congress. If this were true, Congress would have the power to regulate the production of steel, necessary for the construction of locomotives; lumber, for the construction of coaches; rubber, for the construction of springs; food and clothing for the sustenance of the train crews; in fact, there is almost no article that might not be included in this manner. This question was fully covered by the recent decision of the Supreme Court in *Heisler* v. *Thomas Colliery Company*,

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[1] For a statement by the Court of the facts, see opinion handed down Apr. 19, 1920, in connection with the granting of a preliminary injunction, reported in 3 F. T. C. at page 556 et seq. The case was appealed by the Commission to the Court of Appeals of the District of Columbia.

[2] The date is that of the final decree. The opinion in connection with the granting of plaintiff's motion was handed down as of Jan. 30, 1923.

[3] Of the D. C., Jan. 2, 1923, 285 Fed. 936.

No. 541, November 27, 1922.[4] In that case the State of Pennsylvania imposed a tax upon anthracite coal. The plaintiff sought to have the act adjudged unconstitutional. It was contended in that case that the tax was a regulation of interstate commerce. In deciding this the Supreme Court, through Mr. Justice McKenna said:

It is that the products of a State that have, or are destined to have a market in other States are subjects of interstate commerce, though they have not moved from the place of their production or preparation.

The reach and consequences of the contention repels its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from State jurisdiction and deliver to Federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other States at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet "on the hoof," wool yet unshorn, and coal yet unmined because they are in varying percentages destined for and surely to be exported to States other than those of their production.

The court then proceeds to refer to the case of *Coe* v. *Errol*,[5] and other cases, and concludes:

The effect of these cases is attempted to be evaded by the assertion that the statute in imposing the tax when the coal "is ready for shipment or market" is a plain and intentional fraud upon the commerce clause. We can not accept the accusation as justified, or that the situation of the coal can be charged by it and as moving in interstate commerce when it is plainly not so moving. The coal, therefore, is too definitely situated to be misunderstood and the cases cited to establish a different character and subjection need not be reviewed.

FINAL DECREE.

The above entitled cause having come on to be heard upon plaintiff's motion to strike from the files the amended answer as amended by the addition of paragraph 20 on the ground that said answer so amended sets forth no defense to the bill of complaint; and the said motion having been fully argued by counsel for plaintiff and defendant; and the court having considered the same;

It is now this 6th day of March, 1923, by the Court

Adjudged, ordered and decreed, First, that the said amended answer does not state a defense to said bill of complaint; and the Court having asked defendant's counsel whether it could further amend in substance its final amended answer, and counsel for defendants having stated in open court that said amended answer set forth its full defense, and it therefore appearing to the Court that said amended answer was not further amendable in substance, it is now, therefore, further

Adjudged, ordered, and decreed, That the said motion of the plaintiff to strike the said amended answer from the files be and the same is hereby granted on the ground that the same does not state a defense; to which ruling, order and decree the defendant notes an exception on the ground that the rules and practice of this Court do not provide for striking out the amended answer for insufficiency

[4] 260 U. S. 245. [5] 116 U. S. 517.

and on the ground that the said amended answer state a sufficient defense to the bill of complaint, which exception is hereby allowed.

Second. Defendant having elected to stand upon its said amended answer and not to answer further, and having excepted to the ruling, order and decree of the Court that said amended answer does not state a defense and granting plaintiff's motion to strike out the said amended answer for that reason, and defendant having moved to vacate said ruling, order and decree and to proceed to the taking of testimony and the hearing of this case upon the issues raised by the bill of complaint and the said amended answer:

It is further

Adjudged, ordered, and decreed, That said motions be and they are hereby denied, to which ruling, order, and decree the defendant notes an exception which is hereby allowed, and upon motion of the plaintiff the Court now, therefore, proceeds to make and enter a final decree herein and

It appearing to the court:

(1) That on or about December 15, 1919, the defendant adopted a resolution whereby it resolved to proceed to the collection and publication from time to time of current information with respect to the production, ownership, manufacture, storage and distribution of certain essential basic commodities of prime necessity and general use, including coal, together with figures of cost and wholesale and retail prices as is more particularly set forth in paragraph 3 of said bill of complaint;

(2) That thereafter on or about January 31, 1920, said defendant, by written order served upon plaintiff, required the plaintiff to make to the Commission monthly reports concerning its costs of production, its selling costs, the costs of coal sold, its total sales both in tons and dollars, and other data as specified in a prescribed form and in accordance with instructions relating thereto together with plaintiff's balance sheet as of the close of business December 31, 1919, or at the close of plaintiff's last fiscal year and further stating "Your attention is called to the fact that the above mentioned law provides penalties for delay or failure in the making of reports to the Commission or for making false reports," all as is more particularly set forth in paragraph 4 of the bill of complaint and the exhibits attached to said bill of complaint;

(3) That thereafter on or about March 2, 1920, the defendant served upon the plaintiff a notice of default stating that default had been made by plaintiff in the matter of the requirement by the defendant that plaintiff make and file with defendant monthly reports pursuant to the aforesaid notice served January 31, 1920, and that unless such report be furnished steps would be taken by defendant to recover penalties against plaintiff for such default, as is more particularly set forth in paragraph 5 of said bill of complaint.

(4) That no complaint has been filed by or before the defendant charging the plaintiff with unfair methods of competition or with violation of the Federal Trade Commission Act or any of the antitrust acts of Congress;

(5) That unless plaintiff furnished the information sought by the defendant, the defendant would proceed to enforce its aforesaid order by suits for penalties provided in the Federal Trade Commission Act;

(6) That the defendant was and is without power or authority in law to make or enforce the aforesaid order served by the defendant on the plaintiff on or about January 31, 1920, or to require the plaintiff to make to defendant reports as aforesaid for the reason that the defendant could not constitutionally be authorized and has not by the Federal Trade Commission Act or by any other statute been authorized to require or demand said reports or to demand that it be furnished with said information and data; and the Court does not pass upon the question as to what effect if any should be given to the matters set forth in paragraph 13 of the bill of complaint alleging that certain powers of the defendant had become transferred to the United States Fuel Administration and this decree is not based upon such allegations;

(7) That plaintiff is without adequate remedy at law and will suffer irreparable injury unless the relief prayed in said bill of complaint is granted;

Wherefore, it is further adjudged, ordered, and decreed

First. That the temporary injunction heretofore granted be and the same is hereby made permanent;

Second. That said order of the defendant, served upon the plaintiff on or about January 31, 1920, is hereby set aside, annulled and held for naught;

Third. That said defendant, the Federal Trade Commission, its members, agents, assistants, deputies, employees, attorneys, and all persons acting by, through or under said defendant, are hereby permanently enjoined and restrained from enforcing said order or taking any steps or instituting or causing to be instituted any proceedings toward the enforcement of said order or toward requiring the plaintiff to fill out and file reports with the defendant pursuant to the aforesaid instructions of said defendant, or toward requiring the plaintiff to furnish the defendant or any of its members, agents, assistants, deputies, employees, or attorneys or any other persons acting by, through or under said defendant the costs of mining the coal mined or produced by it or the other information aforesaid, or any part thereof, including income statements and balance sheets, and from demanding or taking any steps to demand from plaintiff herein or to secure the furnishing to the defendant of any data whatsoever with respect to the costs of mining, production, ownership or storage of the coal mined or produced by it, or selling costs. or selling prices or amounts of said coal.

Fourth. That the plaintiff have and recover of said defendant the plaintiff's costs of said suit.

To this decree and to each part thereof the defendant notes an exception which is hereby allowed.

JENNINGS BAILEY, *Justice.*

From the foregoing rulings and decree the defendant in open court notes an appeal to the Court of Appeals of the District of Columbia which is hereby allowed and the bond for costs on appeal is hereby fixed at One Hundred Dollars or the amount of cash which may be deposited in lieu of such bond is fixed at Fifty Dollars.

JENNINGS BAILEY, *Justice.*

MENNEN CO. v. FEDERAL TRADE COMMISSION.[1]

(Circuit Court of Appeals, Second Circuit. March 13, 1923.)

No. 69.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—FEDERAL TRADE COMMISSION WITHOUT JURISDICTION TO REGULATE BUSINESS METHODS UNLESS UNFAIR.

The purpose of Federal Trade Commission Act, September 26, 1914 (Comp. St. par. 8836a–8836k), was to prevent unfair methods of competition in interstate commerce, and unless a person, partnership, or corporation is using unfair methods the Commission has no authority to interfere.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—ALLEGATION THAT PRACTICE OF VARYING DISCOUNTS TENDED TO HINDER COMPETITION A PLEADER'S CONCLUSION.

In proceedings by the Federal Trade Commission to require respondent to desist from unfair methods of competition, the allegation that respondent's practice of varying discounts tended unduly to hinder competition between distributors of its products to retailers or directly to the consuming public is a pleader's conclusion.

3. STATUTES KEY NO. 217—REPORTS AND STATEMENTS OF COMMITTEE IN CHARGE OF BILL MAY BE CONSIDERED TO RESOLVE AMBIGUITY.

In the case of an ambiguous or obscure statute the intent of Congress may be gathered from statements in reports of committees having the legislation in charge in either House of Congress, and statements made on the floor of either House by the committee in charge of the bill in the course of its passage may in like manner be considered.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 68—ALLOWANCE OF VARYING DISCOUNTS TO WHOLESALERS AND RETAILERS NOT UNFAIR COMPETITION.

Where a manufacturer sold both to wholesalers and retailers, its allowance to wholesalers of a discount which it denied to retailers and its classifying in the group of retailers, mutual or cooperative corporations organized and owned by retailers, and its refusal to sell to such retailers' organizations at wholesale prices, was not unfair competition in violation of Clayton Act, par. 2 (Comp. St. par. 8835b), and the Federal Trade Commission Act, par. 5 (Comp. St. par. 8836e); there being no attempt by the manufacturer to fix resale price and no discrimination between retailers or between wholesalers.

(The syllabus is taken from 288 Fed. 774.)

Petition to review order of the Federal Trade Commission.

Petition by the Mennen Company to review an order of the Federal Trade Commission, requiring the respondent to cease and desist from certain methods of competition in interstate commerce in violation of law. Order reversed.

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[1] Petition by the Commission for writ of certiorari denied by the Supreme Court on June 11, 1923. (262 U. S. 759.)

Gilbert H. Montague, Joseph W. Goodwin, and Charles Furnald Smith, all of New York City, for petitioner.

W. H. Fuller, chief counsel, Federal Trade Commission of Washington, D. C., and W. T. Kelley, of Washington, D. C., for respondent.

Felix H. Levy, of New York City, for Wholesale Dry Goods Ass'n, National Hardware Ass'n, National Supply & Machinery Dealers' Ass'n, National Wholesale Jewelers' Ass'n, National Floor Covering Ass'n, and American Brush Manufacturer's Ass'n as amici curiae.

Before Rogers, Manton, and Mayer, Circuit Judges.

Rogers, *Circuit Judge:*

This cause comes here on petition to review an order made on March 8, 1922, by the Federal Trade Commission.

The petitioner 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 Newark in the State of New Jersey. It is engaged in the business of manufacturing and selling talcum powder, tooth paste, shaving soap, and various other toilet articles, causing the same to be transported to purchasers thereof from the State of New Jersey into various other States of the United States and foreign countries in direct competition with other persons and corporations similarly engaged. It is hereinafter referred to as the respondent.

The Federal Trade Commission on April 15, 1920, filed a complaint against the respondent and subsequently an amended complaint on January 27, 1921. It alleged that respondent had adopted a plan for the allowance of trade discounts in the marketing of its products; that in pursuance of such plan respondent has and continues to classify its customers into two groups according to a basis of selection adopted by it and has allowed and does allow to purchasers of the same quantity and quality of its products, different discount rates according to the classification of such purchasers by respondent. It is further alleged that this practice of varying discounts, irrespective of quantity and quality, tends unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public. It is also alleged that by reason of the facts recited, the respondent is using an unfair method 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.

It is further alleged that the varying discount rates allowed by the respondent are a discrimination in price between purchasers of respondent's commodities for use, consumption or resale within the United States and the District of Columbia, the effect of which may be to substantially lessen competition in the distribution of respondent's products or between distributors thereof.

It is further alleged that such discrimination is not founded in differences in the grade, quality or quantity of the commodity sold and does not make only due allowance for difference in the cost of selling or transportation and is not made in good faith to meet competition; that the plan for classification of customers and the allowance of varying discount rates is not a selection of customers in bona fide transactions not in restraint of trade.

It is also alleged that the actions and doings of the said respondent referred to and recited are contrary to the intent and meaning of Section 2 of an Act of Congress, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.

The respondent filed an answer denying the jurisdiction of the Commission. It also denied the material allegations of the amended complaint and asked that it be dismissed. The motion to dismiss was overruled and denied.

Hearings were had and evidence was introduced, before an examiner of the Commission, in support of the allegations of the amended complaint and on behalf of the respondent. Then the proceeding came on for final hearing and the Commission having heard argument and considered the record made its findings as to the facts and its conclusion. Its conclusion was that the practices of respondent amounted to unfair methods of competition in interstate commerce and a violation of the acts of Congress hereinbefore mentioned. And an order to cease and desist was entered.

The transactions complained of are transactions in interstate commerce and the acts with which the respondent is charged are done in the course of such commerce. The practices in which the respondent is engaged as charged in the complaint are admitted by it in its answer, but it denies that those practices tend unduly to hinder competition, or that they constitute an unfair method of competition in commerce, or amount to a restraint of trade.

Two acts of Congress are herein involved. The Federal Trade Commission Act, being the Act of September 26, 1914, 38 Stat. 717, 724, which provides in Section 5 "That unfair methods of competition in commerce (i. e., interstate commerce) are hereby declared unlawful," and the Clayton Act, being the Act of October 15, 1914, which was passed to supplement existing laws against unlawful restraints and monopolies, 38 Stat. 730, provides in Section 2 as follows:

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 commerce: *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: *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.

This section of the Clayton Act provides in substance that it shall be unlawful for any person engaged in interstate or foreign commerce to discriminate in price between different purchasers of commodities in transactions within the United States or under its jurisdiction "Where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

Before considering the provision of Section 2 of the Clayton Act we find it necessary to consider the Federal Trade Commission Act which lies at the basis of this entire proceeding.

The Federal Trade Commission Act having declared that "unfair methods of competition in commerce" are unlawful, and created a Federal Trade Commission empowered and directed it 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." And unless a person, partnership, or corporation is engaged in using "unfair methods of competition" the Commission has no authority whatever to proceed under the act.

We are, therefore, confronted with the question as to what is meant by the words "unfair methods of competition in commerce" as used in the act. That question was before the Supreme Court in 1919 in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421. That case went up from this court, 258 Fed. 314, and affirmed the conclusion at which we arrived. The defendants were partners and were engaged in selling ties and bagging for cotton bales. They sold principally to jobbers and dealers who resold the same to retailers, cotton ginners and farmers. For more than a year they had refused to sell any such ties unless the prospective purchasers would also buy from them the bagging to be used with the number of ties proposed to be bought. This was held plainly insufficient to show an unfair method of competition. In the opinion, which was written by Mr. Justice McReynolds, the court said:

> 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, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade. * * *
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> The complaint contains no intimation that Warren, Jones & Gratz did not properly obtain their ties and bagging as merchants usually do; the amount controlled by them is not stated; nor is it alleged that they held a monopoly of either ties or bagging or had ability, purpose or intent to acquire one. So far as appears, acting independently, they undertook to sell their lawfully acquired property in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take it upon terms openly announced.

In this case, as in the Gratz case, the complaint contains no intimation that the Mennen Company has any monopoly of the business of manufacturing and selling toilet articles, or that it has the ability or intent to acquire one. So far as appears the Mennen Company, acting independently, has undertaken to sell its own products in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take them upon terms openly announced.

In this case, as in the Gratz case, nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. The allegation that its practice of varying discounts tended unduly to hinder competition between distributors of respondent's products to retailers or directly to the consuming public is a pleader's conclusion. The acts complained of in this case are not those which have heretofore been regarded as "opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly." And as said in the Gratz case "If real competition is to continue, the right of the individual to exercise reasonable discretion in respect of his own business methods must be preserved."

The Clayton bill, as originally introduced, did not contain the words "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce," now found in Section 2, but contained the words "with the purpose or intent thereby to destroy or wrongfully injure the business of a competitor of either such purchaser or seller."

The record filed in this court shows no contention by the commission that the practices complained of have lessened competition as between the Mennen Company and its competitors, but it shows at the most that the practices have decreased competition among the Mennen Company's customers, or those desiring to become such. And it is said that if the phraseology above quoted as originally contained in the bill had been retained therein upon final passage instead of the phraseology, likewise above quoted, which was substituted therefor, there might be just ground for the claim that the Clayton Act prescribed practices which injure competition among the customers of the manufacturer, and not merely competition between such manufacturer and his competitors. But the elimination of the phraseology contained in the bill as originally reported and the substitution therefor of the phraseology in the form in which the bill was finally enacted strongly indicates that Congress did not have in contemplation the former character of competition but only the latter.

In the phraseology of the bill as originally reported the intention was unmistakably expressed that it was intended to protect by its prohibitions both kinds of competition, competition between the manufacturer and his competitors, as well as competition between the customers of the manufacturer. The act as reported prohibited acts "with the purpose or intent to thereby destroy or wrongfully injure the business of a competitor, of either such purchaser or seller."

We have recently had occasion to point out that in the case of an ambiguous or obscure statute the intent of Congress may be gathered from statements in reports of committees having the legislation in charge in either House of Congress. *U. S. ex rel. Fazio* v. *Tod*, decided November 13, 1922.[1] And statements made on the floor of either House by the committee in charge of the bill in the course of its passage may in like manner be considered. See *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 475.

It is a matter of common knowledge that prior to the enactment of the Clayton Act a practice had prevailed among large corporations of lowering the prices asked for their products in a particular

[1] 285 Fed. 847.

locality in which their competitors were operating for the purpose of driving a rival out of business. Such lowering of prices was maintained within the particular locality while the normal or higher prices were maintained in the rest of the country; and this practice was continued until the smaller rival was driven out of business, whereupon the prices in that locality would be put back to the normal level maintained in the rest of the country. The Clayton Act was aimed at that evil. This appears from the report of the Judiciary Committee of the House of Representatives, from which we quote as follows:

> Section 2 of the bill is intended to prevent unfair discrimination. It is expressly designed with the view of correcting and forbidding a common and widespread unfair trade practice whereby certain great corporations and also certain smaller concerns which seek to secure a monopoly in trade and commerce by aping the methods of the great corporations, have heretofore endeavored to destroy competition and render unprofitable the business of competitors by selling their goods, wares, and merchandise at a less price in the particular communities where their rivals are engaged in business than at other places throughout the country. * * *
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> The necessity for legislation to prevent unfair discriminations in prices with a view of destroying competition needs little argument to sustain the wisdom of it. In the past it has been a most common practice of great and powerful combinations engaged in commerce—notably the Standard Oil Co., The American Tobacco Co., and others of less notoriety, but of great influence—to lower prices of their commodities, oftentimes below the cost of production in certain communities and sections where they had competition, with the intent to destroy and make unprofitable the business of their competitors, and with the ultimate purpose in view of thereby acquiring a monopoly in the particular locality or section in which the discriminating price is made. * * *
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> In seeking to enact section 2 into law we are not dealing with an imaginary evil or against ancient practices long since abandoned but are attempting to deal with a real, existing, widespread, unfair and unjust trade practice that ought at once to be prohibited in so far as it is within the power of Congress to deal with the subject.

There is nothing in the report of the committee which shows that in reporting the bill the committee had in mind anything more than the suppression of the evil above referred to.

This substitution in the final stages of the Clayton bill of the clause to which we have referred plainly indicates the intent of Congress to exclude from the operation of the section mere competition among "purchasers" from the "seller" or "person" who allowed or withheld the discount and to include therein only competition between such "seller" or "person" and the latter's own competitors. It was the latter class of competition and not the former which had been "the common practice of great and powerful combinations engaged in commerce" to which the committee in its report referred. And there is nothing in the report of the Judiciary Committee, of either House, or in anything said on the floor of either House by those in charge of the bill which indicates or suggests any such interpretation which the Commission in this case has placed upon the act.

What the Mennen Company has done, was to allow to "wholesalers" who purchased a fixed quantity of their products a certain rate of discount while to the "retailers" who purchased the same quantities it denied the discount rates allowed to the "wholesalers." This does not indicate any purpose on the part of the Mennen Company to create or maintain a monopoly. The company is engaged in an entirely private business and it has a right freely to exercise its own independent discretion as to whether it will sell to "wholesalers" only or whether it will sell to both "wholesalers" and "retailers," and if it decides to sell to both it has a right to determine whether or not it will sell to the "retailers" on the same terms it sells to the "wholesalers." It may announce in advance the circumstances, that is, the terms, under which it will sell or refuse to sell. In *United States* v. *Colgate & Co.*, 250 U. S. 300, 307, the Supreme Court declared that—

In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal. And, of course, he may announce in advance the circumstances under which he will refuse to sell. "The trader or manufacturer, on the other hand, carries on an entirely private business, and may sell to whom he pleases." *United States* v. *Trans-Miss. Freight Association*, 166 U. S. 290, 320. "A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade."

In the Colgate case the court sustained the right of a manufacturer engaged in a private business to announce in advance the prices at which his goods may be resold and his right to refuse to deal with wholesalers or retailers who do not conform to such prices. As subsequently explained by the court that case was decided upon the ground that the manufacturer had an undoubted right to specify resale prices and to refuse to deal with anyone who failed to maintain the same. It did not appear that the Colgate Company had undertaken to enter into any agreements, express or implied, which undertook to obligate vendees to observe specified resale prices. And in the case now before the court it does not appear and is not alleged that the Mennen Company ever undertook to fix the prices at which its products were to be resold by those who purchased from it.

In *Federal Trade Commission* v. *Beech-Nut Packing Company*, 257 U. S. 441, the subject was gone into very fully and the Colgate case was explained and the reason for that decision was clearly stated and it was made evident that if the Colgate Company had undertaken by agreements express or implied to obligate those to whom it sold its products to observe specified resale prices a different decision would have been rendered. In the Beech-Nut case the right to fix the prices at which the manufacturer will sell is again fully recognized. But the course which the Beech-Nut Company had adopted was condemned because of the method it pursued to control the resale prices. The difficulty was that the manufacturer had adopted and was enforcing a system of fixing and maintaining certain specified standard prices at which its products should be resold by purchasers thereof with the purpose of eliminating competition in prices among all jobbers engaged in handling the products manufactured by the company. And the court after reviewing its previous decisions (250 U. S. 300; 252 U. S. 85; 256 U. S. 208) said:

By these decisions it is settled that in prosecutions under the Sherman Act a trader is not guilty of violating its terms who simply refuses to sell to others, and he may withhold his goods from those who will not sell them at the prices which he fixes for their resale. He may not, consistently with the act, go beyond the exercise of this right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.

In *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307, 312, the Circuit Court of Appeals in the Seventh Circuit declared in speaking of the Federal Trade Commission Act of September 26, 1914, 38 St. 717, c. 311;

We find in the Statute no intent on the part of Congress, even if it has the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away.

And in *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, 227 Fed. 46, 49, we declared in our opinion written by Judge Lacombe:

Before the Sherman Act it was the law that a trader might reject the offer of a proposing buyer, for any reason that appealed to him; it might be because he did not like the other's business methods, or because he had some personal difference with him, political, racial, or social. That was purely his own affair, with which nobody else had any concern. Neither the Sherman Act, nor any decision of the Supreme Court construing the same, nor the Clayton Act, has changed the law in this particular. We have not yet reached the stage where the selection of a trader's customers is made for him by the government.

In accordance with these opinions we have no doubt that the Mennen Company had the right to refuse to sell to retailers at all, and if it chose to sell to them that it had the right to fix the price at which it would sell to them, and that it was under no obligation to sell to them at the same price it sold to the wholesalers. It did not discriminate as between retailers but sold to all retailers on one and the same scale of prices. And it did not discriminate as between wholesalers but sold to all wholesalers on one and the same scale of prices. There is nothing unfair in declining to sell to retailers on the same scale of prices that it sold to wholesalers even though the retailers bought or sought to buy the same quantity the wholesalers bought.

In conclusion it ought perhaps to be said that we have not been unmindful of the fact that the Mennen Company in classifying purchasers into two groups, those of wholesalers and retailers, placed in the group of retailers a class of mutual or cooperative corporations which purchased in large quantities the Mennen products. These mutual or cooperative corporations, it is admitted, consist solely of the retailers in the same line of trade, the stock being held exclusively by retailers. The fact that these individuals, admitted by the counsel for the Federal Trade Commission to be retailers, see fit for their own convenience to organize themselves into a corporation which they constitute their agent for purchasing purposes does not change their character, or the character of their purchases, and convert them into wholesalers.

Whether a buyer is a wholesaler or not does not depend upon the quantity he buys. It is not the character of his buying but the character of his selling which marks him as a wholesaler as this court pointed out in *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Company*, *supra*. A wholesaler does not sell to the ultimate consumer but to a "jobber" or to a "retailer." The persons who constitute these mutual or cooperative concerns are buying for themselves to sell to the ultimate consumers, and not to other "jobbers" or to other "retailers." The nature of the transaction herein involved is not altered by the fact that they make their purchases through the agency of their corporation. For some purposes a corporation is distinct from the members who compose it. But that distinction is a fiction of the law and the courts disregard the fiction whenever the fiction is urged to an intent and purpose which is not within its reason and policy. And in such a case as this the fiction can not be invoked. The important fact is that members of the corporation are all retailers who buy for themselves to sell to the ultimate consumer. The Mennen Company is within its rights in classifying them as retailers.

The facts established by the testimony are not sufficient to constitute a violation either of the Federal Trade Commission Act or of the Clayton Act, and they do not support the Commission's conclusions of law. The Mennen Company is not shown to have practiced "unfair methods of competition in commerce."

The order to cease and desist is reversed.

FEDERAL TRADE COMMISSION v. SINCLAIR REFINING CO. SAME v. STANDARD OIL CO. (NEW JERSEY). SAME v. GULF REFINING CO. SAME v. MALONEY OIL & MFG. CO.[1]

(Argued March 8 and 9, 1923. Decided April 9, 1923.)

Nos. 213, 637, 638, 639.

1. MONOPOLIES KEY NO. 17 (1)—TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—LEASING FOR NOMINAL RENTAL TANKS AND PUMPS FOR GASOLINE PURCHASED FROM LESSOR HELD NOT "UNFAIR METHOD OF COMPETITION."

The practice of wholesale gasoline dealers in leasing to retailers at a nominal rental tanks and pumps for gasoline purchased solely from the lessor does not violate Clayton Act, paragraph 3 (Comp. St. par. 8835c), as to restrictive leases of machinery, where neither the leasing contract nor the circumstances of the business restrict the lessee's freedom to buy or deal in gasoline sold by other wholesalers; nor is such practice an "unfair method of competition," within Federal Trade Commission Act, paragraph 5 (Comp. St. par. 8836e).

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—POWERS OF FEDERAL TRADE COMMISSION ARE LIMITED.

Under Federal Trade Commission Act, paragraph 5 (Comp. St par. 8836e), empowering the commission to prevent unfair methods of competition, the commission has no general authority to compel competitors to a common level, to interfere with ordinary business methods, or to prescribe arbitrary standards for those engaged in the conflict for advantage called competition.

(The syllabus is taken from 43 Sup. Ct. 450.)

On writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

On writs of certiorari to the United States Circuit Court of Appeals for the Third Circuit.

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[1] 261 U. S. 463.

Petitions by the Sinclair Refining Company, by the Standard Oil Company (New Jersey), by the Gulf Refining Company, and by the Maloney Oil & Manufacturing Company to review orders of the Federal Trade Commission. The orders were set aside (*Sinclair Refining Co.* v. *Federal Trade Commission*, 276 Fed. 686; *Standard Oil Co.* v. *Federal Trade Commission*, 282 Fed. 81), and the Federal Trade Commission brings certiorari. Judgments affirmed.

The Attorney General, and Messrs. Adrien F. Busick and Eugene W. Burr, both of Washington, D. C., for petitioner.

Mr. Roy T. Osborn, of Chicago, Ill., for respondent Sinclair Refining Co.

Mr. C. D. Chamberlin, of Cleveland, Ohio, for respondent Maloney Oil & Manufacturing Co.

Mr. R. T. Batts, of Pittsburgh, Pa., for respondent Gulf Refining Co.

Mr. J. H. Hayes, of New York City, for respondent Standard Oil Co. (New Jersey).

Mr. Justice McReynolds delivered the opinion of the court.

In separate proceedings against thirty or more refiners and wholesalers, the Federal Trade Commission condemned and ordered them to abandon the practice of leasing underground tanks with pumps to retail dealers at nominal prices and upon condition that the equipment should be used only with gasoline supplied by the lessor. Four of these orders were held invalid by the circuit courts of appeals for the third and seventh circuits in the above entitled causes—276 Fed. 686, 282 Fed. 81; and like ones have been set aside by the circuit courts of appeals for the second and sixth circuits—*Standard Oil Co.* v. *Federal Trade Commission*, 273 Fed. 478; *Canfield Oil Co.* v. *Federal Trade Commission*, 274 Fed. 571. The proceedings, essential facts and points of law disclosed by the four records now before us are so similar that it will suffice to consider No. 213, as typical of all.

July 18, 1919, the Commission issued a complaint charging that respondent, Sinclair Refining Company, was purchasing and selling refined oil and gasoline and leasing and loaning storage tanks and pumps as part of interstate commerce in competition with numerous other concerns similarly engaged; and that it was violating both the Federal Trade Commission Act, 38 Stat. 717, and the Clayton Act, 38 Stat. 730.

The particular facts relied on to show violation of the Federal Trade Commission Act are thus alleged—

Paragraph 3. That respondent in the conduct of its business, as aforesaid, with the effect of stifling and suppressing competition in the sale of the aforesaid products and in the sale, leasing, or loaning of the aforesaid devices and other equipments for storing and handling the same, and with the effect of injuring competitors who sell such products and devices, has within the four years last past sold, leased, or loaned and now sells, leases, or loans the said devices and their equipment for prices or considerations which do not represent reasonable returns on the investments in such devices and their equipments; that many such sales, leases, or loans of the aforesaid devices are made at prices below the cost of producing and vending the same; that many of such contracts for the lease or loan of such devices and their equipments provide or are entered into with the understanding that the lessee or borrower shall not place in such devices, or use in connection with such devices and their equipments, any refined oil or gasoline of a competitor; that only a small proportion of the dealers in gasoline and refined oil under such agreements and understandings deal also in similar products of respondent's competitors and that only a small proportion of such dealers require or use more than a single pump outfit in the conduct of their said business; that there are numerous competitors in the sale of such products, who are unable to enter into such lease agreements or understandings because of the large amount of investment required to carry out such lease agreements as a competitive method of selling refined oil and gasoline; that there are numerous other competitors of respondent engaged in the manufacture and sale of said devices and their equipments who do not deal in refined oil and gasoline, and therefore do not sell or lease said devices and their equipments for a nominal consideration on a condition or understanding that their products only are to be used therein; that the said numerous competitors who were unable to enter into such lease agreements or understandings, as aforesaid, have lost numerous customers in the sale of refined oil and gasoline to respondent because of the business practices of respondent hereinbefore set forth. That the said numerous other competitors of respondent who manufacture and sell said devices and their equipments, but do not sell refined oil and gasoline, as aforesaid, have lost numerous customers and prospective customers for the purchase of their devices and equipments because of the said business practices of respondent, as hereinbefore set forth.

To show violation of the Clayton Act the complaint alleged—

Paragraph 3. That the respondent, for four years last past, in the conduct of its business as aforesaid, has leased and made contracts for the lease and is now leasing and making contracts for the lease of said devices and their equipments to be used within the United States, and has fixed and is now fixing the price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not purchase or deal in the products of a competitor or competitors of respondent; and that the effect of such leases or contracts for lease, and conditions, agreements, or understandings, may be and is to substantially lessen competition and tend to create a monopoly in the territories and localities where such contracts are operative.

Respondent answered and evidence was taken. In October, 1919, the Commission announced its report, findings, and conclusions, the substance of which follows:

1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal business office located at the City of Chicago, in the State of Illinois, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, hereinafter referred to as products, and is largely engaged in refining crude petroleum, and that it is now and has been since January 25, 1917, in connection with the aforementioned business, engaged in the leasing and loaning, but not in the manufacture, of oil pumps, storage tanks, and containers and their equipment, hereinafter referred to as devices, in various States of the United States, but not in the District of Columbia, in competition with numerous other persons, firms, corporations and copartnerships similarly engaged; that prior to the 25th day of January, 1917, the corporate name of respondent was the Cudahy Refining Company.

2. That the respondent, in the conduct of its business, as aforesaid and as hereinafter more particularly described, extensively refines petroleum and its products and purchases refined oil and gasoline, all hereinafter referred to as "products" and also purchases all pumps, storage tanks, or containers, hereinafter referred to as "devices," the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices are leased or loaned by respondent to various persons, firms, corporations, and copartnerships; that in the conduct of its business of purchasing and selling such products and selling, leasing, or loaning such devices, the same are constantly moved from one State to another by respondent and there is conducted by respondent a constant current of trade in such products and devices between

various States of the United States; that there are numerous competitors of respondent, who, in the conduct of their business in competition with respondent, purchase similar products and purchase and manufacture similar devices, the said devices being used to contain said products, the said products and devices then being handled and stored in the various States of the United States and transported in interstate commerce; that the aforesaid products are sold and the aforesaid devices sold, leased, or loaned by such competitor of respondent to various persons, firms, corporations, and copartnerships, that in the conduct of their business, as aforesaid, competitors of respondent constantly move such products and devices from one State to another and there is conducted by said competitors a constant current of trade in such products and devices between the various States of the United States; that respondent has conducted its said business in a similar manner to that above described since January 25, 1917.

3. That respondent now leases and loans and has for the period of its business existence, leased and loaned devices and equipment for storing and handling its products, and that the monetary considerations received by respondent do not represent reasonable returns upon the investment in such devices and equipment; and also that such leases and loans of said devices and equipment are made for monetary considerations below the cost of purchasing and vending the same when the business of leasing or loaning said devices and equipment and the returns received thereon are considered separate and apart from the general business and sales policy of the respondent; that respondent's form of contract with the users of such devices and equipment provides in substance that the devices and equipment shall be used for the sole purpose of storing and handling gasoline supplied by respondent, and that the uniform contract used by respondent for leasing such devices and equipment is in form, tenor, and substance as follows.

[The ordinary form of contract (printed in the margin[2]) is here set out. It recites the customer's desire to install certain equipment and, among other things, provides that this shall be used only for storing and handling gasoline supplied by the lessor; that if put to any other use the lessee's right therein shall terminate; and that upon termination of the lease, by whatever means effected, the lessee may purchase the equipment for a specific sum.]

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[2] EQUIPMENT CONTRACT.

This agreement, made and entered into this ____________ day of ________________, 19——, between Sinclair Refining Company of ________________________________, party of the first part, and ____________________, of the City of __________________, State of ____________________, party of the second part, witnesseth:

Whereas, party of the second part is now being supplied with gasoline by the party of the first part and desires to install on his premises situated at ____________________ the following equipment for the better storing and handling of such gasoline ____ __ ______

Now, therefore, in consideration of the premises and of the sum of one dollar by the party of the second part to the party of the first part (the receipt of which is hereby acknowledged), the above named parties do hereby agree as follows:

1. The above described equipment shall be used by the party of the second part for the sole purpose of storing and handling the gasoline supplied by the party of the first part.

2. The party of the second part agrees, at his own cost, to maintain said equipment in good condition and repair so long as he shall continue to use the same.

3. The party of the second part agrees that he will not encumber or remove said equipment, or do or suffer to be done anything whereby said equipment or any part thereof may be seized, taken on execution, attached, destroyed or injured, or by which the title of the party of the first part thereto may in any way be altered, destroyed or prejudiced.

4. In the event party of the second part should at any time use said equipment for any other purpose than the storing and handling of gasoline supplied by the party of the first part, or should cease for __________ days to handle gasoline secured from the party of the first part the right or license of the party of the second part to said equipment shall at once terminate, and thereupon party of the first part shall have the right to enter upon said premises and remove said equipment and every part thereof.

5. The party of the second part shall indemnify and save harmless the party of the first part of and from any liability for loss, damage, injury or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of gasolene stored in said tank or drawn through said pump.

6. This agreement shall terminate forthwith upon the sale or other disposition of said premises by party of the second part, and in any event upon the expiration __________ months from the date hereof; and in the event that by mutual consent said equipment remains in the possession of the party of the second part at the expiration of said period, it is agreed that the same shall be used by party of the second part subject to all of the terms and conditions of this agreement, and such may be terminated at any

4. That the contracts mentioned in the preceding paragraph also provide that such equipments shall be used by the lessee only for the purpose of holding and storing the respondent's petroleum products; that a small proportion of such lessees handle similar products of respondent's competitors; and that only a small proportion of such lessees as handle similar products of respondent's competitors require or use more than a single pump outfit in the conduct of their said business; that the practice of leasing such devices requires a large capital investment; that many competitors of respondent do not possess sufficient capital and are not able to purchase and lease devices as respondent does as aforesaid, partly by reason of which such competitors have lost numerous customers to respondent; that the effect of the practice of leasing by contract such equipments, where such contracts contain the said provision restricting the use of the same to the storage and handling of respondent's products as aforesaid, may be to substantially lessen competition and tend to create for the respondent a monopoly in the business of selling petroleum products.

Conclusions.—That the methods of competition and the business practices set forth in the foregoing findings as to the facts are, 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," and are in violation of Section 3 of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

Thereupon the Commission ordered that respondent cease and desist from—

1. Directly or indirectly leasing pumps or tanks or both and their equipments for storing and handling petroleum products in the furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of the same after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

2. Entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agree or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their equipments the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made.

The Clayton Act provides—

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

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time after the expiration of ---------- months from the date hereof by the party of the first part giving ten days' notice to that effect. Upon the termination of this license by whatever means effected, the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part thereof; provided, however, that the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of ------------------

This contract is executed in triplicate, and it is agreed that the contract held by the party of the first part is to be considered the original and to be the binding agreement in case the duplicate varies from it in any particular.

In witness whereof, the parties hereto have caused this agreement to be executed the day and year first above written.

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.

Respondent's written contract does not undertake to limit the lessee's right to use or deal in the goods of a competitor of the lessor, but leaves him free to follow his own judgment. It is not properly described by the complaint and is not within the letter of the Clayton Act. But counsel for the Commission insist that inasmuch as lessees generally—except garage men in the larger places—will not encumber themselves with more than one equipment, the practical effect of the restrictive covenant is to confine most dealers to the products of their lessors; and we are asked to hold that, read in the light of these facts, the contract falls within the condemnation of the statute. *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346, and *United Shoe Machinery Corporation* v. *United States*, 258 U. S. 451, are relied upon.

In the *Standard Fashion Co.* case the purchaser expressly agreed not to sell or permit sale of any other make of patterns on its premises. It had a retail store in Boston and sales elsewhere were not within contemplation of the parties. This Court construed the contract as embodying an undertaking not to sell other patterns. In *United Shoe Machinery Corporation* v. *United States*, when speaking of certain "tying" restrictions, this court said—

While the clauses enjoined do not contain specific agreements not to use the machinery of a competitor of the lessor, the practical effect of these drastic provisions is to prevent such use. We can entertain no doubt that such provisions as were enjoined are embraced in the broad terms of the Clayton Act which cover all conditions, agreements or understandings of this nature. That such restrictive and tying agreements must necessarily lessen competition and tend to monopoly is, we believe, equally apparent. When it is considered that the United Company occupies a dominating position in supplying shoe machinery of the classes involved, these covenants signed by the lessee and binding upon him effectually prevent him from acquiring the machinery of a competitor of the lessor except at the risk of forfeiting the right to use the machines furnished by the United Company which may be absolutely essential to the prosecution and success of his business. This system of "tying" restrictions is quite as effective as express covenants could be and practically compels the use of the machinery of the lessor except upon risks which manufacturers will not willingly incur.

There is no covenant in the present contract which obligates the lessee not to sell the goods of another; and its language cannot be so construed. Neither the findings nor the evidence show circumstances similar to those surrounding the "tying" covenants of the Shoe Machinery Company. Many competitors seek to sell excellent brands of gasoline and no one of them is essential to the retail business. The lessee is free to buy wherever he chooses; he may freely accept and use as many pumps as he wishes and may discontinue any or all of them. He may carry on business as his judgment dictates and his means permit, save only that he cannot use the lessor's equipment for dispensing another's brand. By investing a comparatively small sum, he can buy an outfit and use it without hindrance. He can have respondent's gasoline, with the pump or without the pump, and many competitors seek to supply his needs.

The cases relied upon are not controlling.

Is the challenged practice an unfair method of competition within the meaning of section five of the Federal Trade Commission Act? [8] Reviewing the circumstances, four circuit courts of appeals have answered, no. And we can find no sufficient reason for a contrary conclusion. Certainly the practice is not opposed to good morals because characterized by deception, bad faith, fraud or oppression. *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427. It has been openly adopted by many competing concerns. Some dealers regard it as the best practical method of preserving the integrity of their brands and securing wide distribution. Some think it is undesirable. The devices are not expensive—$300 to $500—can be purchased readily of makers and, while convenient, they are not essential. The contract, open and fair upon its face, provides an unconstrained recipient with free receptacle and pump for storing, dispensing, advertising and protecting the lessor's brand. The stuff is highly inflammable and the method of handling it is important to the refiner. He is also vitally interested in putting his brand within easy reach of consumers with ample assurance of its genuineness. No purpose or power to acquire unlawful monopoly has been disclosed, and the record does not show that the probable effect of the practice will be unduly to lessen competition. Upon the contrary, it appears to have promoted the public convenience by inducing many small dealers to enter the business and put gasoline on sale at the crossroads.

The powers of the Commission are limited by the statutes. It has no general authority to compel competitors to a common level, to interfere with ordinary business methods or to prescribe arbitrary standards for those engaged in the conflict for advantage called competition. The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill and capital should have large freedom of action in the conduct of their own affairs.

The suggestion that the assailed practice is unfair because of its effect upon the sale of pumps by their makers is sterile and requires no serious discussion.

The judgments below must be affirmed.

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[8] 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.

JUVENILE SHOE CO., INC., v. FEDERAL TRADE COMMISSION.[1]

(Circuit Court of Appeals, Ninth Circuit. May 14, 1923.)

No. 3927.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 70 (1)—ADOPTING SIMILAR NAME AND TRADE-MARK UNDER WHICH TO MARKET INFERIOR GOODS WARRANTS INJUNCTION.

Where a corporation engaged in the manufacture and sale of children's shoes adopted for its corporate name the name "Juvenile Shoe Company," and adopted a trade name or design resembling the registered trademark of the "Juvenile Shoe Corporation," a competitor manufacturing a higher grade of shoes, such conduct was ample justification for an order of the Federal Trade Commission commanding and enjoining the former company to desist from such unfair competition.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 69—INJUNCTION WILL LIE TO RESTRAIN UNFAIR COMPETITION, IRRESPECTIVE OF INTENT TO MISLEAD.

Injunction will lie against a corporation that by any artifice deceives the public into believing that its goods are those of another corporation having a similar name, and this is true irrespective of any intent to mislead the public, and especially is it true where the corporations are engaged in the same business.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 71—NAME NOT SUBJECT TO APPROPRIATION MAY BE ENTITLED TO PROTECTION AS TRADE NAME.

While the word "Juvenile" may not be susceptible of appropriation as a trade-mark for shoes, yet a corporation which has adopted that name under which to market shoes manufactured by it is entitled to protection against the use of such name as a trade name by a competitor in the same line of business dealing in the same class of goods.

4. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 84—THAT UNFAIR COMPETITION HAS CEASED NO GROUND FOR REFUSING ORDER TO CEASE UNFAIR METHODS.

An order of the Federal Trade Commission, requiring a manufacturer of shoes to cease the use of its corporate trade-name and labels because of similarity to the corporate name and trade-name and label of a competing corporation, will not be disturbed because of proof that the corporation restrained has ceased the use of the obnoxious label; such proof not being such assurance that the use of the labels will not be resumed in the future as to not warrant the issuance of injunction.

[1] Petition for writ of certiorari denied by the Supreme Court on October 15, 1923, 43 Sup. Ct. 84.

(The syllabus is taken from 289 Fed. 57.)

Petition to review order of Federal Trade Commission.

Proceeding by the Juvenile Shoe Company, Inc., against the Federal Trade Commission, to review an order of the Commission requiring petitioner to desist from the use of its corporate name, and enjoining it from certain other acts of unfair competition. Order affirmed.

Fred Mansur, of Los Angeles, Cal., for petitioner.

W. H. Fuller, Charles M. Neff, and Eugene W. Burr, all of Washington, D. C., and D. N. Dougherty, of San Francisco, Calif., for respondent.

Before Gilbert and Rudkin, Circuit Judges, and Dietrich, District Judge.

GILBERT, *Circuit Judge:*

The petitioner seeks to review the order entered against it by the respondent commanding it to desist from certain methods of competition in commerce. The respondent's complaint alleged that the petitioner was organized on May 26, 1919 at Los Angeles, California to sell children's shoes exclusively at wholesale in California and in adjacent states; that the Juvenile Shoe Corporation of America was organized in Missouri on June 8, 1918 to manufacture and sell children's shoes exclusively throughout the United States in interstate commerce in competition with others similarly engaged; that it has built up an extensive business in the sale of its product in California and adjacent states; and that its shoes are of greater value and of superior quality and sell for higher prices than the petitioner's shoes; that the petitioner's corporate name so nearly resembles the corporate name of said Juvenile Shoe Corporation, and its trade name or design so nearly resembles the registered trade mark of the Juvenile Shoe Corporation, that it causes confusion in the trade and thereby induces purchasers of children's shoes to believe that the shoes offered for sale by the petitioner are the shoes manufactured by the Juvenile Shoe Corporation; that the trademark of the latter corporation is "Juvenile Shoe System" used by it since January 1, 1919, and registered November 30, 1920; that since January 1, 1919, the Juvenile Shoe Corporation used its trademark displayed as a wax seal and this seal was employed by it by means of a label placed on the cartons in which the shoes were sold and by tags attached directly to the shoes and by means of a design on the soles of the shoes; that the petitioner put upon the boxes in which its shoes are packed a circular label containing the face of a child surrounded by the words "Juvenile Shoe Company, Inc." which so resembled the trademark of the Missouri corporation as to be likely to cause confusion in the trade and deceive purchasers.

The answer of the petitioner admitted that the shoes sold by the Missouri corporation were of superior quality to those sold by itself. Upon the pleadings and the proof, the respondent made findings and held that the petitioner had violated the provisions of Section 5 of the Act of Congress approved September 26, 1914, creating the Federal Trade Commission and defining its powers and duties, and it ordered that the petitioner, its officers, directors, agents, and employees, cease and desist (1) from using as a part of its corporate name the word "Juvenile" or any word or combination of words likely to be confused with the name of the Juvenile Shoe Corporation of America, (2) from using or permitting to be used in its behalf the word "Juvenile" on its marks, labels, tags, or other devices upon or in connection with the sale of shoes for infants, children and misses, and (3) from directly or indirectly suggesting by the use of a word, mark, or label or otherwise that the goods of the petitioner are the goods of the Juvenile Shoe Corporation of America.

The record fully justifies the order of the Federal Trade Commission enjoining the use of the petitioner's corporate name. The petitioner went into the business of manufacturing and selling children's shoes and took a name so similar to a senior corporation that was engaged in precisely the same business and in the same field that confusion of the two corporations in the public mind was inevitable. The names "Juvenile Shoe Corporation" and "Juvenile Shoe Company, Inc." are practically identical. The reported cases in which injunction has been sustained against the use of a corporate name afford few instances of names so similar and so likely to create confusion as those which these two corporations used. In assuming its name, a corporation acts at its peril. *American Order Scottish Clans* v. *Merrill*, 151 Mass. 558; *Metropolitan Tel. Co.* v. *Metropolitan Tel. Co.*, 141 N. Y. S. 598. Injunction will lie against a corporation that by any artifice deceives the public into believing that its goods are those of another corporation having a similar name, and this is true irrespective of any intent to mislead the public and especially is it true where the corporations are engaged in the same business, *General Film Co. of Mo.* v. *General Film Co. of Me.*, 237 Fed. 64; *Nat. Circle Daughters of Isabella* v. *Nat. Order D. I.*, 270 Fed. 723.

Nor are we convinced that this court should modify that portion of the order here under review which forbids the petitioner to use the word "Juvenile" on its marks, labels, and tags in connection with the sale of children's shoes and from suggesting by word, mark, label or otherwise that its goods are the goods of the Juvenile Shoe Corporation. The Federal Trade Commission found as a fact that the use of the word "Juvenile" as it was employed by the petitioner caused confusion and led purchasers to believe that the petitioner's goods were those of the Juvenile Shoe Corporation. It is not asserted that the Juvenile Shoe Corporation has the exclusive right to the word "Juvenile" as applied to shoes but we think it has a proprietary and exclusive right to the good will which it has created by its dealing and its advertising with the purchasing public as well as by the superior quality of its shoes, and that the use of the word "Juvenile" by the petitioner on its shoes, has, as the Trade Commission finds, tended to create the false impression that the goods sold by the petitioner were the goods of the Juvenile Shoe Corporation, and while it may be that the word "Juvenile" is not susceptible of appropriation as a trademark, the right to its use as a trade name may still be protected against the unfair competition which might result from the use of the same trade name by another corporation, where both are engaged in the same trade, dealing in the same class of goods and in actual competition with one another, *Pillsbury-Washburn Flour Mills Co.* v. *Eagle*, 86 Fed. 608; *Straus* v. *Notaseme Co.*, 240 U. S. 179; *G. W. Cole Co.* v. *American Cement and Oil Co.*, 130 Fed. 703; *N. K. Fairbank Co.* v. *Luckel King and Cake Soap Co.*, 102 Fed. 327; *Stark* v. *Stark Bros. Nurseries and Orchards Co.*, 257 Fed. 9.

It is contended that since the petitioner has ceased the use of a label on the cartons in which its shoes are packed and sold, an order to cease placing such labels on the cartons is not warranted. But it does not follow that the order should be dissolved. The Juvenile Shoe Corporation is not bound to accept the fact of the disuse of the labels as proof that the use will not be resumed in the future, and the mere fact that the petitioner has ceased such use is no reason why injunction should not issue, *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307; *Saxlehner* v. *Eisner*, 147 Fed. 189.

The order of the Federal Trade Commission is affirmed.

SOUTHERN HARDWARE JOBBERS' ASS'N ET AL. v. FEDERAL TRADE COMMISSION.

(Circuit Court of Appeals, Fifth Circuit. June 13, 1923.)

No. 3887.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—EVIDENCE HELD TO WARRANT FINDING OF CONDUCT WHICH RESTRAINED COMPETITION BY NONMEMBERS OF ASSOCIATION.

Evidence heard by the Federal Trade Commission *held* to warrant the commission in finding that a jobbers' association and its members had pursued a course of conduct in their dealing with manufacturers for the purpose of preventing the manufacturers from selling to any jobbers not qualified to be members of the jobbers' association, which hindered and obstructed the free and natural flow of commerce in interstate trade, so as to constitute an unfair method of competition, within the Federal Commission Act (Comp. St. par. 8836a–8836k), if such conduct was in pursuance of an agreement or understanding, express or implied.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—AGREEMENT MAY BE INFERRED FROM CIRCUMSTANCES INDICATING CONCERTED ACTION.

An agreement between parties who were pursuing a course of conduct which interfered with the free flow of interstate commerce may be inferred from acts of the parties in such conduct which indicated a concerted plan on their part.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO 80½, NEW, VOL. 8A KEY-NO. SERIES—ORDER TO CEASE AND DESIST FROM DESIGNATED PRACTICES HELD NOT TOO BROAD.

Where the Federal Trade Commission found that a jobbers' association and its officers and members were guilty of unfair competition in preventing manufacturers from dealing with cooperative jobbing companies, an order containing 11 paragraphs, each of which required the association to cease and desist from certain practices therein specified, *held* not too broad.

(The syllabus is taken from 290 Fed. 773.)

Petition to review order of Federal Trade Commission, sitting at Washington, D. C.

Petition by the Southern Hardware Jobbers' Association and others to review and set aside an order of the Federal Trade Commission. Petition denied.

Peter O. Knight, of Tampa, Fla. (C. Fred Thompson and A. G. Turner, both of Tampa, Fla., on the brief), for petitioners.

W. H. Fuller, Chief Counsel, of McAlester, Okla., and Adrien F. Busick and Charles Melvin Neff, both of Washington, D. C., for respondent.

Before Walker, Bryan, and King, Circuit Judges.

WALKER, *Circuit Judge:*

The Southern Hardware Jobbers Association, a voluntary, unincorporated association (herein called the Jobbers Association), four business corporations, and two individuals, George E. King and John Donnan, filed their petition in this court praying the review and setting aside of an order to cease and desist made against them by the respondent, The Federal Trade Commission. The proceeding which resulted in that order was commenced by a complaint made against the petitioners by the respondent. That complaint contained allegations to the following effect:

The members of the Jobbers Association, about 350 in number, are persons, partnerships and corporations, engaged in the business of buying and selling hardware in wholesale quantities throughout certain Southern States of the United States, said King being its president, said Donnan its secretary, and said business corporations being members thereof and engaged in the business of buying and selling hardware in wholesale quantities in Atlanta, Georgia; they buy hardware in various States of the United States and cause same to be transported in interstate commerce, and are fairly representative of the entire membership. Within a year prior to the filing of the complaint certain retail dealers in hardware in Georgia and adjacent States organized under the laws of Delaware a corporation called the Merchants Cooperative Association (herein referred to as the Cooperative Association), for the purpose of purchasing in wholesale quantities through the instrumentality of that corporation all hardware and supplies dealt in by such retail dealers. The profits arising from the business of that corporation were to be distributed between its stockholders and other retailers for whom it purchased—a retailer to get the whole or a part of the profit made on each sale to it by that corporation. At the outset that corporation undertook to purchase supplies for the retailers for whom it was to purchase through W. A. Ray Hardware Company, of Pensacola, Florida, a member of the Jobbers Association, under an arrangement which provided for that company receiving as compensation five per cent of the cost price of supplies so purchased. Another corporation, the American Purchasing Company, was organized under the laws of Delaware for the purpose of acting as purchasing agent for the Cooperative Association and other domestic and foreign purchasers.

The parties named as defendants in the complaint mentioned have conspired and confederated together with themselves and with other persons and particularly with other members of the Jobbers Association to prevent the Cooperative Association and American Purchasing Company from obtaining from manufacturers and other usual sources from which purchasers of hardware in wholesale quantities must obtain supplies either directly or through the assistance of said W. A. Ray Hardware Company, and have, by boycott and threats of boycott and other unlawful means induced manufacturers and others to refuse to sell their products to the Cooperative Association and the American Purchasing Company, and such manufacturers and their brokers were informed by petitioners herein that if they sold their products to the Cooperative Association and the American Purchasing Company the members of the Jobbers Association would not thereafter buy the products of such manufacturers, by means whereof manufacturers of hardware generally were intimidated to the extent that they thereafter refused to sell their products to the Cooperative Association and the American Purchasing Company. The machinery of the Jobbers Association was employed by its officers and members in bringing about and making effective said boycott.

After petitioners herein had answered that complaint and after the introduction of evidence and a hearing by the Commission, it made its findings as to the facts and stated its conclusion. It made findings in accord with the allegations of the complaint as to the nature and composition of the Jobbers Association, as to the relations to it of the defendant individuals and corporations, as to the nature of the business engaged in by the latter, as to the organization and purpose of the Cooperative Association and the American Purchasing Company, and as to purchases made through the W. A. Ray Hardware Company. The Commission found, among other things, to the following effect:

When the complaint was filed and when the findings were made the Jobbers Association comprised about 90 per cent of all those doing a jobbing or a wholesale business in hardware in that portion of the United States bounded by the Potomac River on the North, the Rio Grande on the South, the Atlantic Ocean on the East, and the Western boundary of Oklahoma on the West; about 90 per cent of its members were and are engaged in selling hardware at retail as well as at wholesale, and are competitors of exclusively retail dealers in hardware in the territory mentioned, including their own customers who are retailers. For a firm or corporation to be eligible to membership in the Jobbers Association a by-law provides that its sales to merchants shall be not less than 75 per cent of its gross sales of not less than $250,000.00 a year, that it has not less than three salesmen constantly on the road, and that it has capital, or capital and surplus, of not less than $75,000.00. The membership of the Jobbers Association is further restricted to those wholesalers whose policy it is to distribute goods through so-called regular channels of trade, that is, from manufacturer to jobber or wholesaler, from jobber or wholesaler to retailer, and from retailer to consumer; it being contrary to that policy for a hardware manufacturer to sell direct to a retailer on the same terms and conditions that it sells like goods and quantities to so-called legitimate jobbers and wholesalers, and such policy requiring that, in the case of a sale by a manufacturer to a retailer price differentials be charged to protect the so-called legitimate jobber or wholesaler in his method of distribution.

The purpose of the Jobbers Association and its members is to dominate the wholesale and jobbing trade in hardware in the territory mentioned and to hinder competition in such trade arising from the operations of jobbers or wholesalers who do not conform to the plan of distribution approved by the Jobbers Association. It is the policy of members of the Jobbers Association to refuse to buy from hardware manufacturers who sell to customers who do not conform to the distribution policy approved by the Jobbers Association. To promote that policy said Association conducts a system of espionage upon the business of the wholesale and jobbing trade in said territory. In many instances the members and officers of the Jobbers Association, including petitioners, have notified hardware manufacturers that named jobbers or wholesalers, including the Cooperative Association and the American Purchasing Company, do not conform to the method of distribution approved by the Jobbers Association, whereby the manufacturers so notified are made to understand that they have the choice between getting the custom of the members of the Jobbers Association or selling to jobbers or wholesalers who do not conform to the practice approved by the Jobbers Association. Close relations have been and are maintained between the officers and members of the Jobbers Association and the officers and members of the American Hardware Manufacturers Association, which includes the principal manufacturers of hardware in the United States.

The officers and members of the Jobbers Association made known to the officers and members of the Hardware Manufacturers Association that the former disapproved of sales of hardware to jobbers or wholesalers who do not conform to the policy approved by the Jobbers Association on the same terms and conditions as are accorded to jobbers and wholesalers who conform to that policy. The Jobbers Association furnished to the Hardware Manufacturers Association and its members lists of so-called regular jobbers and wholesalers in the territory mentioned, and notified them that named jobbers or wholesalers in that territory, including the Cooperative Association and the American Purchasing Company, did not conform to the policy approved by the Jobbers Association. By such means manufacturers of hardware were warned by petitioners not to trade or deal with objectionable wholesalers or jobbers on the same terms accorded to so-called regular jobbers or wholesalers on pain of losing the trade or patronage of members of the Jobbers Association.

In the territory mentioned there are many retailers whose requirements of hardware were and are sufficiently large to make it practicable and profitable for manufacturers to sell direct to them and on the same terms and conditions as they accord to members of the Jobbers Association. Hardware manufacturers are deterred from selling to such dealers on the same terms that are accorded to members of the Jobbers Association by the fear of losing the patronage of members of that Association. By means of recited action participated in by petitioners, manufacturers of hardware, by threats of loss of the patronage of so-called regular jobbers or wholesalers if they sold to the Cooperative Association or the American Purchasing Company on the same terms accorded to members of the Jobbers Association, were induced to refuse to deal with or to sell to, the Cooperative Association and the American Purchasing Company, in interstate commerce, on the same terms which are accorded to members of the Jobbers Association and to wholesalers and jobbers who conform to the policy of distribution approved by the Jobbers Association.

The stated conclusion of the Commission was that the acts, agreements, understanding, policies and practices of the petitioners, and each and all of them, are unfair methods of competition in interstate commerce and constitute a violation of the Federal Trade Commission Act. (38 Stat. 719). By the order complained of the petitioners were to forever cease and desist from:

1. Combining and conspiring among themselves or with others, directly or indirectly, to induce, persuade or compel and from inducing, persuading or compelling manufacturers, importers or producers, their agents or brokers to refuse to sell to the American Purchasing Company or the Merchants' Cooperative Association because of any plan or organization or method of transacting business adopted by said company.

2. Combining and conspiring among themselves and with others to give and from giving, directly or indirectly, verbal, written or other notices or communications to manufacturers, importers, and producers, their agents or brokers, that business concerns not members of the Southern Hardware Jobbers' Association, and not in harmony with the plans and policies of the said Association and not conforming to the tests and standards set up by the said Association for membership therein are not entitled to purchase and obtain goods, wares and merchandise upon the same terms and conditions usually accorded by said manufacturers, importers and producers to the members of the Southern Hardware Jobbers' Association.

3. Combining or conspiring together among themselves or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct, or prevent manufacturers, producers or importers, their brokers or agents, from dealing with the American Purchasing Company or the Merchants Co-operative Association, or others engaged in similar business, upon as favorable terms and conditions usually accorded by the said manufacturers, producers or importers, to the members of the said Southern Hardware Jobbers Association.

4. Hindering, obstructing or preventing, directly or indirectly, any manufacturer, producer, or importer, or broker or agent thereof, from selling and shipping, either or both, in interstate commerce, to the American Purchasing Company or to others engaged in similar business.

5. Combining and conspiring together among themselves, or with others, and from using any scheme or device or means whatsoever to accomplish that result, directly or indirectly, to hinder, obstruct, or prevent The American Purchasing Company or the Merchants' Co-operative Association, or others engaged in similar business, from freely purchasing and obtaining, in interstate commerce, the goods, wares and merchandise usually handled by the said Company or Association in the course of their business, or from freely competing in interstate commerce with the members of the Southern Hardware Jobbers' Association, Beck & Gregg Hardware Company, the Dinkins-Davidson Hardware Company, King Hardware Company, George E. King, or others engaged in similar business.

6. Combining and conspiring, directly or indirectly, among themselves or with others, to establish and to continue maintaining any tests or standards for determining whether said American Purchasing Company or Merchants' Co-operative Association or others engaged in similar business shall be permitted to purchase goods, wares and merchandise in interstate commerce upon the same terms and conditions as the members of the said Southern Hardware Jobbers Association.

7. Combining and conspiring, directly or indirectly, among themselves or with others, to publish or to distribute, and from publishing or distributing to

manufacturers, importers and producers, their agents or their brokers, engaged in selling goods, wares and merchandise, especially hardware, among the various states, lists of the members of the Southern Hardware Jobbers' Association for the purpose and with the intent of influencing said manufacturers, importers, producers, their agents and their brokers, to refrain from making sales of such commodities to others than those named in such lists in the territory covered by the said Association.

8. Combining and conspiring among themselves, or with others, to induce, coerce and compel manufacturers, importers, and producers, or their agents or their brokers, directly or indirectly, to refuse to sell goods, wares and merchandise to the American Purchasing Company or to the Merchants' Co-operative Association, either or both, or to others engaged in the same business, upon the same terms and conditions usually offered and given by the said manufacturers, importers and producers, their agents or their brokers, to the members of the Southern Hardware Jobbers' Association.

9. Carrying on between and among themselves, or with others, communications written or verbal, having the purpose, tendency, or the effect of inducing, coercing or compelling manufacturers, importers, or producers, of goods, wares and merchandise, especially hardware, their agents or their brokers, directly or indirectly, to refuse to deal with or to sell to the American Purchasing Company, or to the Merchants' Co-operative Association, or others engaged in similar business upon the same terms and conditions usually accorded by said manufacturers, importers, and producers to the members of the Southern Hardware Jobbers' Association.

10. Combining or conspiring among themselves, or with others, to compel, or to attempt to compel, the American Purchasing Company, or the Merchants' Co-operative Association, or others engaged in a similar business, to purchase the goods, wares, and merchandise required for their business from or through any competitor of said Purchasing Compnay or said Co-operative Association, or from others similarly engaged.

11. Combining or conspiring among themselves or with others to boycott or to threaten to boycott, or to threaten with loss of patronage or custom, any manufacturer, importer or producer, or his agent or broker, engaged in interstate commerce, for selling or agreeing to sell to the American Purchasing Company or the Merchants' Co-operative Association or others engaged in a similar business, on the same terms and conditions accorded by such manufacturer, importer, or producer, or his agent or broker to members of the Southern Hardware Jobbers' Association.

Evidence adduced warranted the conclusion that a main purpose of the Jobbers Association, its officers and members, was to promote the policy of distributing hardware from manufacturer to wholesaler or jobber, from wholesaler or jobber to retailer, and from retailer to customer, only in the way they approved. It is consistent with that policy for a wholesaler or jobber to be also a retailer if he has in his business a specified amount of capital, if a specified per cent of his gross sales of not less than a specified amount a year is to dealers, and if he keeps constantly on the road not less than a specified number of salesmen. It is contrary to that policy for a retailer, unless he is also a wholesaler or jobber who complies with the just mentioned requirements, to have such relations with a wholesaler or jobber or interest in the business of a wholesaler or jobber as results in the retailer receiving the whole or a part of the profits realized by the wholesaler or jobber on sales made by him to the retailer.

The plan of doing business adopted and attempted to be put into effect by those who promoted and organized the Cooperative Association and the American Purchasing Company was not in harmony with the policy of the Jobbers Association, as it was a feature of that plan of business that a retailer who gets hardware through the concerns mentioned shares in the profits realized by such concerns on sales made by them to the retailer, though such retailer does no wholesale business. It was part of the plan of the promoters and organizers of the Cooperative Association and the American Purchasing Company to supply hardware to only such retailers as were willing and able to pay cash for the hardware they bought. A result of a hardware manufacturer conforming to the policy approved by the Jobbers Association is that one who is solely a retailer can not buy hardware directly or indirectly, or in cooperation with other such retailers, from such manufacturer on the same terms as are accorded to retailers who are members of the Jobbers Association, though such retailer buys in what, as between the manufacturers and jobbers or wholesalers, are recognized as wholesale quantities.

A consequence of the success of the policy approved by the Jobbers Association is to impair the ability of jobbers or wholesalers who share with dealers who are exclusively retailers, to whom they sell, the profits realized on such sales, to compete with jobbers or wholesalers who retain the profits realized on sales made by them to such retailers, as jobbers or wholesalers so sharing their profits with buyers who sell only at retail can not buy hardware from the manufacturer at jobbers' prices and terms. Another consequence of the success of the policy mentioned is to give to retailers who are also such jobbers or wholesalers as are eligible to membership in the Jobbers Association a substantial advantage over dealers who sell only at retail, thereby restraining or hindering competition by the last mentioned dealers.

Whatever influences manufacturers of hardware to refuse to sell their products to dealers who are obnoxious to the Jobbers Association on the same terms as are allowed to members of that Association and those who conform to its policy tends to restrain trade by obstructing or preventing it with such obnoxious dealers. There was evidence of conduct by each of the petitioners which was intended to induce, and was effective in inducing, manufacturers not to sell to the Cooperative Association or one buying for it on the same terms which were accorded to members of the Jobbers Association. If that conduct was in pursuance of an agreement or understanding, express or implied, to which petitioners were parties, thereby to hinder or obstruct the free and natural flow of commerce in interstate trade it constituted an "unfair method of competition" within the Federal Trade Commission Act. *Federal Trade Commission* v. *Beech Nut Co.*, 257 U. S. 441, 453; *Wholesale Grocers' Association* v. *Federal Trade Commission*, 277 Fed. 657.

It was permissible to consider the conduct of the petitioners in the light of the fact that it was disclosed that they had in common the purpose to put into effect the above-mentioned policy of the Jobbers Association. The doing by them of like acts to induce manufacturers to conform to that policy was, under the circumstances, indicative of the existence of an agreement or understanding between them to cooperate in furtherance of that policy. From the evidence as to the relations between the Jobbers Association, its officers and members, and hardware manufacturers and their organization it well might be inferred that manufacturers, in conforming to the Jobbers Association policy, were influenced by the desire to retain the custom and good will of the large body of wholesale buyers banded together in the Jobbers Association, and that such manufacturers or many of them were induced or coerced by the united opposition of the members of the Jobbers Association not to sell hardware in wholesale quantities and at jobbers' prices and terms to dealers such as the Cooperative Association, which was prepared to buy in large quantities and sought no credit for goods bought.

The circumstances attending the furnishing to hardware manufacturers or their association of lists of members of the Jobbers Association and the giving of notice to such manufacturers that named dealers were irregular or not entitled to be treated as legitimate wholesalers were such that it could properly be inferred that those acts were intended to have, and had, the effect of warnings to the manufacturers against selling on usual wholesale terms to dealers who were not members of the Jobbers Association or who were so charged with noncompliance with the policy of that Association. There was evidence tending to prove that the petitioners combined and cooperated to keep manufacturers willing to do so from selling their products at wholesale prices and terms to the Cooperative Association and the American Purchasing Company, and to obstruct and prevent those concerns from competing as jobbers or wholesalers in territory sought to be appropriated by the Jobbers Association and dealers conforming to the method of doing business which was approved by that Association.

That evidence warranted the conclusion that what the petitioners did to thwart the success of the Cooperative Association and the American Purchasing Company went beyond each of the petitioners asserting and seeking to enforce its or his individual views as to business policies or methods, and amounted to cooperation between them in furtherance of a common purpose to prevent hardware manufacturers selling without price discrimination to exclusively retail dealers or organizations buying for such retailers on terms which effect a saving to retailers of all or part of the profit which regular wholesalers or jobbers retain, with the result of requiring such retailers to get hardware only through the self-styled legitimate wholesalers or jobbers. The existence of a combination in restraint of trade may be inferred from evidence of circumstances indicating concert of action to that end. *American Column Co.* v. *United States*, 257 U. S. 377.

The success of the concerted action in which the petitioners participated meant the monopolizing of the wholesale hardware trade in an extensive territory by members of the Jobbers Association and dealers conforming to the above-mentioned policy, and also meant the exclusion of hardware retailers in that territory from sources of supply available to wholesalers unless they combined wholesaling and retailing in the particular way which was approved by the Jobbers Association. We are of opinion that such concerted action involved restraint of interstate trade, and is a proper subject of a Federal Trade Commission order to cease and desist.

As affecting the kind of interstate trade undertaken to be carried on by the Cooperative Association and the American Purchasing Company none of the things enumerated in the order complained of includes conduct which the petitioners are entitled to persist in. The doing or continuing to do by the petitioners of the things enumerated in the order to cease and desist is incompatible with the discontinuance of the practices condemned by the Commission. Under the circumstances, the doing of the forbidden things would be concerted action tending to restrain competition in interstate trade. That being so, we do not think that that order is too broad.

We conclude that the petition should be denied, and it is so ordered.

B. S. PEARSALL BUTTER CO. v. FEDERAL TRADE COMMISSION.

(Circuit Court of Appeals, Seventh Circuit. July 19, 1923.)

No. 3190.

1. MONOPOLIES KEY NO. 17 (2)—CONTRACT HELD ONE OF SALE WITHIN CLAYTON ACT; "CONTRACT OF SALE."

   A contract between a manufacturer and wholesale dealer, by which the latter is given the exclusive right during its term to handle the product of the former in a specified territory, and agrees to sell such product exclusively, is in effect a "contract of sale," within Clayton Act, Par. 3 (Comp. St. Par. 8835c).

2. MONOPOLIES KEY NO. 17 (2)—CONTRACTS BETWEEN MANUFACTURER OF OLEOMARGARINE AND WHOLESALE DEALERS. HELD NOT IN VIOLATION OF CLAYTON ACT.

   Contracts between petitioner, one of 65 manufacturers of oleomargarine in the United States, making slightly more than 1 per cent of the total product, and wholesale dealers, by which the latter are given exclusive sale of petitioner's product during their term in specified territory, and agree to sell no competing product during such term, but which place no restrictions on retailers, *held* not such as tend to create a monopoly, or to substantially lessen competition, in violation of Clayton Act, Par. 3 (Comp. St. Par. 8835c).

(The syllabus is taken from 292 Fed. 720.)

Petition to review order of Federal Trade Commission.

Petition of the B. S. Pearsall Butter Company to review an order of the Federal Trade Commision. Order set aside.

James M. Sheean, of Chicago, Ill., for petitioner.

Adrien F. Busick, of Washington, D. C., for respondent.

Before Alschuler, Evans, and Page, Circuit Judges.

ALSCHULER, *Circuit Judge:*

Petitioner complains of an order of the Federal Trade Commission directing petitioner to desist from "directly or indirectly using formal or informal contracts or understandings to the effect that purchasers or dealers in respondent's products shall not deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of respondent or in competing commodities." The complaint originally charged petitioner with violating section 5 of the Federal Trade Commission Act in the use of unfair methods of competition, and section 3 of the Clayton Act, in making contracts as hereinafter stated. By amendment the first charge was eliminated. Section 3 of the Clayton Act is as follows:

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, * * * 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.

The contract alleged to be violative of this section is:

That the said party of the first part does hereby give to the said party of the second part, the exclusive sale of its brands of oleomargarine and nut margarine in the City of ________________ and vicinity for the period beginning on the first day of March, A. D. 1920, and ending on the last day of Feb., A. D. 1921.

And the party of the second part agrees to wholesale party of the first part's brands of oleomargarine and nut margarine exclusively in the above territory during the period of this contract; second party also agreeing to actively and vigorously press to the best of their ability the sale of said products of first party, and to in every way promote a demand for them in the aforesaid territory.

It is further agreed by the said party of the first part to refund one-half of the amount of the Federal Wholesale License ($100.00) when the party of the second part has sold 40,000 pounds of party of the first part's oleomargarine and nut margarine and the full amount of ($200.00) when they have sold 75,000 pounds of said party's oleomargarine and nut margarine during the period of this contract; also furnish specialty man for a couple of weeks, circularize the trade, furnish advertising literature and do a reasonable amount of newspaper advertising.

It appears that there were in this country 65 manufacturers of margarine products, and that the total product for the year preceding the complaint against petitioner was 350 million pounds, of which petitioner produced about four million, or slightly over one per cent. The largest producer, the Jelke Company of Chicago, 55 million pounds, are extensive advertisers and do not make exclusive agreements for the handling of their product. The five big Chicago packers, who with Jelke manufacture the large bulk of this product, distribute to the trade largely through their own local branches. About twenty of the other manufacturers used contracts more or less similar, and most of the rest of them have some kind of understanding for exclusive representation with the various jobbers who handle their product. There was no evidence of any improper practices on the part of petitioner or of harmful result of its contract either to other manufacturers, dealers or the public, save only as might be gathered from the contract itself.

It is contended for petitioner that its contract does not constitute "a sale or contract for sale of goods" and therefore does not fall within the provisions of section 3; and that under this record the effect of the contract, if of sale, may not "be to substantially lessen competition or tend to create a monopoly."

The agreement may be lacking in elements which would technically make it a contract for sale of goods, such as price and quantity, but it provides a basis for sales under which the parties acted and sales between them were being made, and for the purposes hereof they should not be heard to deny that it was in fact a contract for sale of goods within the purview of section 3 of the Clayton Act. In this respect we think it falls fairly within the recent decision of the Supreme Court in *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U. S. 346. The contract in that case held to be violative of section 3 of the Clayton Act has much similarity to the one here under consideration.

But the circumstances there appearing, and which were manifestly influential in the result there reached, when compared with those here disclosed, require a different disposition hereof. In commenting on the effect of the phrase in section 3, "*may* be to substantially lessen competition" the court said:

> Section 3 condemns sales or agreements where the effect of such sale or contract of sale "may" be to substantially lessen competition or tend to create monopoly. It thus deals with consequences to follow the making of the restrictive covenant limiting the right of the purchaser to deal in the goods of the seller only. But we do not think that the purpose in using the word "may" was to prohibit the mere possibility of the consequences described. It was intended to prevent such agreements as would under the circumstances disclosed probably lessen competition, or create an actual tendency to monopoly. That it was not intended to reach every remote lessening of competition is shown in the requirement that such lessening must be substantial.
>
> Both courts below found that the contract interpreted in the light of the circumstances surrounding the making of it was within the provisions of the Clayton Act as one which substantially lessened competition and tended to create monopoly. These courts put special stress upon the fact found that, of 52,000 so-called pattern agencies in the entire country, the petitioner, or a holding company controlling it and two other pattern companies, approximately controlled two-fifths of such agencies. As the Circuit Court of Appeals summarizing the matter pertinently observed: "The restriction of each merchant to one pattern manufacturer must in hundreds, perhaps in thousands, of small communities amount to giving such single pattern manufacturer a monopoly of the business in such community. Even in the larger cities, to limit to a single pattern maker the pattern business of dealers most resorted to by customers whose purchases tend to give fashions their vogue, may tend to facilitate further combinations; so that the plaintiff, or some other aggressive concern, instead of controlling two-fifths, will shortly have almost, if not quite, all the pattern business."

The record in the case at bar discloses no facts or circumstances which would justify the conclusion that there was here shown more than "the mere possibility of the consequences described." We find nothing from which it might be deduced that the agreement here "would under the circumstances disclosed possibly lessen competition or create an actual tendency to monopoly." Petitioner is comparatively and in fact a small factor in the margarine business of the country—about one percent of the entire production. There does not appear to be anything distinctive about its product—nothing which could not readily be supplied by many other makers of this apparently standardized product. Petitioner does not occupy "a dominant position" in that line of commerce, as was the case in *United Shoe Mach. Co.* v. *United States*, 258 U. S. 451. And it cannot be here said, as in the last named case, that to its customer its particular product "may be absolutely essential to the prosecution and success of his business."

It is interesting here to note that it was only five years previous that petitioner entered into this doubtless then well standardized business, in competition with many others, most of whom have arrangements with their jobbers more or less similar, and that in the face of this competition, in such brief time built up a business of about four million pounds for its last year. From this it may well appear that the similar practice by others in the same class did not result in stifling of competition and monopolizing the trade to the substantial or serious detriment of this recent entrant therein. Nothing here appears to indicate that the ultimate distributor of the product, the retailer, is in any way bound or restricted. He is generally familiar with the market and with the ways and means of transportation of commodities, and if he desires in his business to handle the product of other makers he is at liberty to procure it—from the maker himself or from those who handle it.

Most of the witnesses unite in saying that in the handling of this product there is advantage to manufacturer, jobber, retailer and the public in having a particular brand handled exclusively by one jobber in a given locality wherein he handles no other similar product; and while one or two did say, on being examined as to the result of such a contract, that it might restrict competition, it is evident that they meant no more than that the employment of such contracts might in some circumstances so result.

Under the particular facts which this record discloses it is our view that the contract in question as employed by this petitioner does not fall under the condemnation of section 3 of the Clayton Act.

The order herein of the Federal Trade Commission is reversed, and it is directed that the complaint herein against petitioner be dismissed.

L. B. SILVER CO. *v.* FEDERAL TRADE COMMISSION.

(Circuit Court of Appeals, Sixth Circuit. October 16, 1923.)

No. 3648.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—JURISDICTION OF CIRCUIT COURT OF APPEALS, ON PETITION TO SET ASIDE FEDERAL TRADE COMMISSION'S ORDER, ORIGINAL AND NOT APPELLATE.

Jurisdiction of the Circuit Court of Appeals, on petition to set aside an order of the Federal Trade Commission, is original and not appellate, even though the facts may have been so found as to be beyond controversy, and its decree should be on the lines adopted by courts of equity generally in hearing suits for injunction.

2. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY NO. 97—INJUNCTION NOT GRANTED, UNLESS DEFENDANT CONTINUES UNLAWFUL ACT.

An injunction will not be granted by the Circuit Court of Appeals on application by the Federal Trade Commission, where the defendant is not continuing or threatening unlawful acts, since the commission ordered it to desist, and there is no reason to apprehend renewal of unlawful acts.

(The syllabus is taken from 292 Fed. 752.)

On motion to recall mandate. Motion denied.

For former opinion, see 289 Fed. 985.

PER CURIAM. In due time after the filing of the opinion herein, a mandate was sent to the Commission, in the usual form of mandates which go to District Courts. We directed a modification of the Commission's order in certain respects, and in other respects affirmed it. The Commission now asks that this mandate be recalled, and that this court enter its decree enjoining the Silver Company from further continuing those practices as to which we had affirmed the Commission's order. The ground of this application is that there must be an order of this court before there can be any enforcement of the Commission's order through punishment for violation; that if the application in this matter had been by the Commission for enforcement, instead of by the Silver Company for vacation, the court would have entered such an injunction order; and that, to avoid unnecessary forms and proceedings, such an order should likewise be entered when a petition for vacation is denied. It is said that this practice was pursued by the Circuit Court of Appeals of the Second Circuit in the Beech Nut Case, when the court entered its decree, pursuant to the mandate from the Supreme Court (257 U. S. 441), sustaining the Commission's order in the essential particulars, but modifying it somewhat.

It does not necessarily follow that the court should take the same action upon a petition by a respondent to set aside the Commission's order as upon a petition of the Commission to enforce; but, even if not, it would have been entirely proper for the Commission to couple with its answer in this case a cross-petition asking enforcement, and thus to present the question with all formality; and, if it were necessary, we would be inclined to permit, now, an amendment, of the pleadings for that purpose.

Upon its merits, the question of the form which our order should take depends upon whether our jurisdiction is appellate or original. If the former, under our established practice we would affirm or reverse and remand, and in either case the judgment or decree to be enforced would continue to be that of the court below. If the latter, we would naturally enter our own decree, fixing the rights of the parties and in such form that it would be enforceable by us.

We are satisfied that our jurisdiction in matters of this class is original, even though the facts may have been so found as to be beyond controversy. The questions of law involved are presented to us for the first time to any court, and the jurisdiction is no more appellate than is the jurisdiction of the District Courts to vacate orders of the Interstate Commerce Commission. Hence it would seem that our decrees should be upon the lines adopted by courts of equity generally in hearing suits for injunction.

It is the general practice in such cases that if the defendant is continuing or threatening unlawful acts there will be an injunction; but if whatever was unlawful ceased long before the bill was filed, and as soon as it was brought to the attention of the defendant by complaint, and there is no reason to apprehend its renewal, the bill will be dismissed without prejudice. In the present case it is not claimed that any act which was found by this court to be unlawful was, after the Commission's order to desist, by the Silver Company so continued that there would have been any basis for a proceeding by the Commission to enforce its order, excepting only as the Silver Company continued to claim that the O. I. C. breed was traceable back to a "Mammoth White." This, in the opinion of a majority of the court, was a relatively trifling incident, pertaining to the substantial claim that the O. I. C. was a separate breed. As to this substantial claim, we have held that the Silver Company should not be enjoined. The situation, then, is that, as to the only substantial respect in which the Silver Company ever disobeyed the Commission's order, and as to which its enforcement could have been asked by the Commission, it has turned out that the Silver Company was substantially right, while as to the other matters of importance involved the practices complained of were discontinued long before the Commission's order, and there is no reason to apprehend a renewal. Hence the majority of us think that the situation does not call for any injunction.

In the *Beech Nut Case*, it is to be assumed that the Beech Nut Company continued to follow the practices finally forbidden (and at first approved by the Circuit Court of Appeals) until the Supreme Court's decree. There was, therefore, basis for petition by the Commission to have its order enforced, and satisfactory reason for such a decree as would have been entered on such a petition.

The customary form of mandate which was used in this case is not completely appropriate to these views; but, as it takes practical effect here, the form is not prejudicial, and there is no sufficient occasion to change it.

The motion to recall is denied.

Appendix III.

RULES OF PRACTICE BEFORE THE COMMISSION.

[Adopted June 17, 1915. As amended to Jan. 14, 1924.]

I. SESSIONS.

Principal office.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m.

Commission may exercise power elsewhere.

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.

Hearings as ordered.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Sessions for orders and other business.

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.

Quorum.

Three members of the Commission shall constitute a quorum for the transaction of business.

Orders signed by Secretary.

All orders of the Commission shall be signed by the Secretary.

II. COMPLAINTS.

Who may ask complaint.

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.

Form of application.

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.

Commission to investigate.

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

Issuance and service of complaint.

Notice. 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.

III. ANSWERS.

Time allowed for answer. Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer to the complaint. Form of answer. Such answer 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. Answers in typewriting must be on one side of the paper only, on Size of paper, margin, etc. 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. Three copies of such answers must be furnished.

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 Personal, or 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; By leaving copy, or or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; By registered mail. 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. Return. 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.

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.

Subpœnas 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.

Subpœnas for production of documentary evidence.

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.

Witness fees and mileage.

Notice. 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.

III. ANSWERS.

Time allowed for answer. Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer to the complaint. Form of answer. Such answer 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. Answers in typewriting must be on one side of the paper only, on Size of paper, margin, etc. 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. Three copies of such answers must be furnished.

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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.

Subpœnas 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. Subpœnas for production of documentary evidence.

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. Witness fees and mileage.

VIII. TIME FOR TAKING TESTIMONY.

Examination of witnesses to proceed as fast as practicable.

Notice to counsel.

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.

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.

General counsel or assistant to conduct hearing.

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.

XII. HEARINGS BEFORE EXAMINERS.

Examiner to take testimony.

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

Testimony to be completed within 30 days except for good cause.

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 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.

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.

Time allowance for submission of tentative findings.

XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Commission may order.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Before any person designated.

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 depo-

Applications for depositions.

sition 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 by the officer. Deposition to be forwarded. 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.

Notice. No deposition shall be taken except after at least six days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

Limitations as to time. 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.

XIV. DOCUMENTARY EVIDENCE.

Relevant and material matter only to be filed. 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.

XV. BRIEFS.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. If briefs are filed, the exceptions, if any, to the examiner's report must be incorporated in the briefs. The presiding Commissioner or examiner shall fix the time within which briefs shall be filed and service thereof shall be made upon the adverse parties. Time of filing.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Twenty copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered. Filed with secretary with proof of service.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the Commission at least five days before the time for filing the brief. Applications for extension of time

Every brief shall contain, in the order here stated— Form of brief.

(1) A concise abstract or statement of the case.

(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.

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. Requirements if more than 10 pages.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide and with double-leaded text and single-leaded citations. Size of type, paper, etc.

Oral arguments will be had only as ordered by the Commission. Oral arguments.

XVI. ADDRESS OF THE COMMISSION.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed. Federal Trade Commission, Washington, D.C.

TABLE OF COMMODITIES.

INDEX.[1]

[1] For index by commodities involved, rather than practices, see Commodities Index.

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