FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS AND ORDERS OF THE FEDERAL TRADE COMMISSION

JULY 1, 1919, TO JUNE 30, 1920

PUBLISHED BY THE COMMISSION

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PREFACE.

This, the second volume of the Commission's decisions, covers the year, July 1, 1919, to June 30, 1920, inclusive. The widening range of the subjects covered should make the publication valuable to those interested in the development of the law in relation to unfair competition and kindred subjects. A noteworthy feature, and one which should prove of value, is the new arrangement of the acts which the Commission administers, with annotations.

This volume, including the annotations to the acts referred to, has been prepared and edited by Richard S. Ely, of the Commission's staff.

MEMBERS OF THE FEDERAL TRADE COMMISSION.

(As of June 30, 1920.)

VICTOR MURDOCK, *Chairman*,
Took oath of office September 4, 1917, and October 4, 1918.*
HUSTON THOMPSON, *Vice Chairman*,
Took oath of office January 17, 1919, and September 26, 1919.*
WILLIAM B. COLVER,
Took oath of office March 21, 1917.
NELSON B. GASKILL,
Took oath of office January 31, 1920.
JOHN GARLAND POLLARD,
Took oath of office March 10, 1920.
J. P. YODER, *Secretary*,
Took oath of office April 1, 1919.

During the period July 1, 1919, to June 30, 1920, there also served as a commissioner—
JOHN FRANKLIN FORT,
Took oath of office March 20, 1917, and October 4, 1917.* Served as chairman July 1 to November 30, 1919. Resigned November 30, 1919.

* Second term.

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FEDERAL TRADE COMMISSION

v.

MUTUAL CANDY CO., INC.

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

Docket 275.—July 7, 1919.

SYLLABUS.

1. Where a corporation, organized for the purpose of providing a system of fixing and maintaining standard resale prices at which goods purchased from it by its stockholders and other jobbers should be sold by them to retail dealers and by retail dealers to the public—

(*a*) sold its stock in limited amounts to wholesale dealers only and required that each purchaser should (1) sign an "application for purchasing privilege," designating the corporation as its exclusive purchasing agent for any line of goods it might handle, (2) cooperate with the corporation by selling goods at prices fixed by the corporation, (3) agree to give the trustees of the corporation an option to purchase the stock if at any time the subscriber desired to sell it, (4) agree to forfeit claims to certain purchase dividends should the buyer violate any of the terms of the agreement;

(*b*) enforced the maintenance by stockholders of the prices fixed by it by withholding purchase dividends from such as did not maintain its prices and by forfeiting to the corporation the stock of such offenders;

(*c*) threatened to cease selling to jobbers who did not observe the resale prices fixed by it;

(*d*) purchased outright confections and chewing gum from certain manufacturers and sold them to its stockholders and to the trade, though professedly organized as the purchasing agent for its stockholders; and

2. Where such corporation acted in conjunction with its stockholders and other jobbers in enforcing a system of fixing prices at which retail dealers purchasing from its stockholders and from other jobbers dealing with it, should sell products purchased from them, and as a part of this scheme—

(*a*) induced its stockholders and other jobbers to refuse to sell merchandise purchased from it to retail dealers not maintaining resale prices fixed by the corporation;

(*b*) refused to sell to jobbers who sold to retail dealers not maintaining its fixed resale prices:

Held, That a scheme of resale price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Mutual Candy 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 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," 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 above-named respondent, Mutual Candy Co., Inc., is now and was at all the times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York in said State. That the stock of said corporation consists of 5,000 shares of preferred stock of the par value of $10 each, and 2,500 shares of common stock of the par value of $10 each, of which said preferred stock 2,406 shares have been issued and sold to approximately 110 wholesale dealers in confections in what is known as the Metropolitan District, consisting of Greater New York, Long Island, Westchester County, N. Y., and Hudson County, N. J., and the sale of said stock has been limited to wholesale dealers in confectionery, groceries, or drugs, and each of said stockholders was required to purchase at least 10 shares of the preferred stock, and no more than 50 shares of said stock were offered to any one stockholder, and with each 2 shares of preferred stock so sold 1 share of the common stock was given free to such purchaser; that the preferred stock carries a 7 per cent cumulative dividend, but is non-

voting, while holders of the common stock are allowed 1 vote per share in all stockholders' meetings. That originally each of said stockholders was required to sign a written instrument designated as "Application for purchasing privilege," in which respondent is designated as the exclusive purchasing agent of said stockholders for any line of goods which respondent might decide to handle, and said stockholder obligated himself to purchase such goods only through respondent and to cooperate with respondent in selling such goods. Each of said stockholders was also required to sign a memorandum of agreement wherein it was provided that in case such stockholder desired to sell his common stock an option to purchase same must be given to certain trustees for the persons constituting the board of directors, in order to prevent any of said stock falling into the hands of anyone who is not a wholesale dealer in confections. Each of said stockholders was further required to agree that he would forfeit all claim to certain purchase dividends should he violate any of the terms of his agreement with respondent or otherwise prove disloyal to the respondent. That in the conduct of its business as hereinabove described the respondent buys goods, wares, and merchandise in various States of the United States and ships the same into the State of New York and various other States other than those in which said goods are bought, and that it there sells such goods, wares, and merchandise in the usual conduct of its business as aforesaid, to various purchasers thereof and transports the same from the place of sale to such purchasers in various States of the United States other than in such States from which they are sold. That in the conduct of such business in buying and selling such goods, wares, and merchandise as aforesaid respondent constantly moves such goods, wares, and merchandise from one State to another, and there is conducted by respondent a constant current of trade in such goods, wares, and merchandise between various States of the United States.

PAR. 2. That while respondent was organized ostensibly for the purpose of acting as the purchasing agent for its stockholders, it now claims to perform the functions of a jobber of confections and chewing gum manufactured by

the Beech-Nut Packing Co. and other manufacturers, but the primary object of such organization was and is to adopt and maintain a system of fixing a schedule of standard resale prices at which goods purchased from respondent by its stockholders and other jobbers should be sold by such stockholders and other jobbers to retail dealers, and each of said stockholders was given to understand that the provisions of his "Application for purchasing privilege," described in paragraph 1 hereof, to the effect that he would cooperate with the respondent in the resale of said goods, obligated such stockholder to maintain said resale prices fixed by respondent. That price cutting, or the resale of goods by such stockholders at prices below those fixed by respondent, was designated by respondent as "cut-throat practices," and respondent repeatedly stated in its printed matter and letters to its stockholders that one of the objects of respondent's organization was to induce jobbers to discontinue such practices. That the maintenance by the stockholders of respondent of resale prices as fixed by respondent for products sold by it was enforced by respondent by withholding from any stockholder who failed or refused to observe said resale prices the purchase dividend which would otherwise accrue on said stock and by the forfeiture of such stock to respondent. That jobbers purchasing merchandise from respondent who were not stockholders in respondent corporation were coerced into maintaining such resale prices by threats that respondent would refuse to sell merchandise to anyone who failed or refused to observe such resale prices.

PAR. 3. That in addition to the system of fixing prices at which goods purchased from respondent by its stockholders and other jobbers should be resold, as set out in paragraph 2 herein, said respondent, acting in conjunction with said jobbers, further maintains a system of fixing prices at which retail dealers who sell products purchased by them from the stockholders or other jobbers dealing with respondent shall resell such products to the consuming public, thereby enlisting the active cooperation of such retail dealers in enlarging the sale of such price-maintained products and depriving such retail dealers of their right to sell such products at

such prices as they may deem adequate and warranted by their selling efficiency; and, as a part of its scheme to maintain such resale prices, respondent, for more than two years last past, has induced its stockholders and other jobbers to whom it sells merchandise to refuse to sell merchandise to retail dealers who fail or refuse to sell said merchandise to the consuming public at the specified selling prices fixed and determined by respondent as aforesaid. As a means of enforcing observance of such resale prices by retail dealers who handled the products sold by respondent, said respondent refused and continues to refuse to sell products handled by it to jobbers who will resell same to a retail dealer who will not observe the resale prices fixed by respondent, thereby cutting off the source of supply of any jobber purchasing merchandise from the respondent who would resell such merchandise to a retail dealer who would not observe such resale prices.

PAR. 4. That in carrying out the system of resale price maintenance set out in paragraphs 2 and 3 hereof, respondent has occupied the dual rôle of selling agent for the products manufactured by the Beech-Nut Packing Co. and other manufacturers of confections and chewing gum and the purchasing agent for its stockholders, although ostensibly purchasing such products outright from the manufacturer and reselling same to its stockholders.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Mutual Candy Co., Inc., 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 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 filed its answer, signed

by its president and general manager, admitting that the matters and things alleged in the said complaint and each paragraph thereof are substantially true and correct in the manner and form therein set forth, with the exception of certain allegations contained in paragraph 4 thereof, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts, its conclusions of law, and its order disposing of this proceeding without the introduction of testimony, and waiving and relinquishing any and all right to the introduction of such testimony, the Commission, having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts so admitted and its conclusions of law.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Mutual Candy Co., Inc., is now and was at all times mentioned in the complaint a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in said State. That the stock of said corporation consists of 5,000 shares of preferred stock of the par value of $10 each and 2,500 shares of common stock of the par value of $10 each, of which said preferred stock 2,406 shares have been issued and sold to approximately 110 wholesale dealers in confections in what is known as the Metropolitan District, consisting of Greater New York; Long Island; Westchester County, N. Y.; and Hudson County, N. J.; and occasionally elsewhere in the States of New York and New Jersey; and the sale of said stock has been limited to wholesale dealers in confectionery, groceries, or drugs, and each of said stockholders was required to purchase at least 10 shares of the preferred stock, and no more than 50 shares of said stock were offered to any one stockholder, and with each 2 shares of preferred stock so sold 1 share of the common stock was given free to such purchaser; that the preferred stock carries a 7 per cent cumulative dividend but is non-voting, while holders of the common stock are allowed 1 vote per share in all stockholders' meetings.

PAR. 2. That originally each of such stockholders was required to sign a written instrument designated as "Application for purchasing privilege," in which respondent was designated as the exclusive purchasing agent of said stockholders for any line of goods which respondent might decide to handle, and said stockholder obligated himself to purchase such goods only through respondent and to cooperate with respondent in selling such goods.

PAR. 3. That each of such stockholders was also required to sign a memorandum of agreement wherein it was provided that in case such stockholder desired to sell his common stock, an option to purchase same must be given to certain trustees for the persons constituting the board of directors, in order to prevent any of said stock falling into the hands of anyone who was not a wholesale dealer in confections.

PAR. 4. That each of such stockholders was further required to agree that he would forfeit all claim to certain purchase dividends should he violate any of the terms of his agreement with respondent, or otherwise prove disloyal to the respondent. That the maintenance by the stockholders of respondent of resale prices as fixed by respondent for products sold by it was enforced by respondent by withholding from any stockholder who failed or refused to observe said resale prices the purchase dividend which would otherwise accrue on said stock and by the forfeiture of such stock to respondent.

PAR. 5. That in the conduct of its business, as hereinabove described, the respondent buys goods, wares, and merchandise in various States of the United States and ships the same into the State of New York and various other States other than those in which said goods are bought, and that it there sells such goods, wares, and merchandise in the usual conduct of its business as aforesaid to various purchasers thereof and transports the same from the place of sale to such purchasers in various States of the United States other than in such States from which they are sold.

PAR. 6. That in the conduct of such business in buying and selling such goods, wares, and merchandise as aforesaid,

respondent constantly moves such goods, wares, and merchandise from one State to another, and there is conducted by respondent a constant current of trade in such goods, wares, and merchandise between various States of the United States.

PAR. 7. That while respondent was organized ostensibly as the purchasing agent for its stockholders, in reality it bought outright confections and chewing gum from the Beech-Nut Packing Co. and other manufacturers and resold same to its stockholders and the jobbing confectionery trade generally; and the primary object of such organization was and is to adopt and maintain a system of fixing a schedule of standard resale prices at which goods purchased from respondent by its stockholders and other jobbers should be sold by such stockholders and other jobbers to retail dealers, and each of said stockholders was given to understand that the provisions of his "Application for purchasing privilege," described in paragraph 2 hereof, to the effect that he would cooperate with the respondent in the resale of said goods, obligated such stockholder to maintain said resale prices fixed by respondent.

PAR. 8. That jobbers purchasing merchandise from respondent who were not stockholders in respondent corporation were coerced into maintaining such resale prices by threats that respondent would refuse to sell merchandise to anyone who failed or refused to observe such resale prices.

PAR. 9. That in addition to the system of fixing prices at which goods purchased from respondent by its stockholders and other jobbers should be resold, as set out in paragraph 7 herein, said respondent, acting in conjunction with said jobbers, further maintains a system of fixing prices at which retail dealers who sell products purchased by them from the stockholders or other jobbers dealing with respondent shall resell such products to the consuming public, thereby enlisting the active cooperation of such retail dealers in enlarging the sale of such price-maintained products and depriving such retail dealers of their right to sell such products at such prices as they may deem adequate and warranted by their selling efficiency; and, as a part of its scheme to maintain such resale prices, respondent, for more than two years

last past, has induced its stockholders and other jobbers to whom it sells merchandise to refuse to sell merchandise to retail dealers who fail or refuse to sell said merchandise to the consuming public at the specified selling price fixed and determined by respondent as aforesaid.

PAR. 10. That as a means of enforcing observance of such resale prices by retail dealers who handled the products sold by respondent, said respondent refused, and continues to refuse, to sell products handled by it to jobbers who will resell same to a retail dealer who will not observe the resale prices fixed by respondent, thereby cutting off the source of supply of any jobber purchasing merchandise from the respondent who would resell such merchandise to a retail dealer who would not observe such resale prices.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 4, 7, 8, 9, and 10, and each and all of them, are under the circumstances therein set forth 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 respondent, Mutual Candy Co., Inc., 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 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 filed its answer, signed by its president and general manager, admitting that the matters and things alleged in the said complaint, and

each paragraph thereof, are substantially true and correct in the manner and form therein set forth, with the exception of certain allegations contained in paragraph 4 thereof, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts, its conclusions of law, and its order disposing of this proceeding without the introduction of testimony, and waiving and relinquishing any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Mutual Candy Co., Inc., its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly recommending, requiring, or by any means whatsoever bringing about the resale by dealers, whether jobbers, wholesalers, or retailers, of the products handled by it, according to any system of prices fixed or established by respondent, and more particularly including any or all of the following means:

(1) Entering into contracts, agreements, or understandings with dealers, whether jobbers, wholesalers, or retailers, including its stockholders, to the effect that such dealers, or any of them, in reselling the products handled by respondent, will adhere to any system of prices fixed or established by respondent.

(2) Securing contracts, agreements, or understandings from such dealers to the effect that they will adhere to any such system of resale prices.

(3) Entering into any contracts, agreements, or understandings with its jobber-stockholders providing for the payment of so-called "purchase dividends" upon condition that resale prices fixed by respondent shall be maintained.

(4) Discriminating in favor of or against its jobber-stockholders or other dealers by means of any system of so-called

"purchase dividends" or otherwise, conditioned upon the maintenance of resale prices fixed by respondent.

(5) Refusing or threatening to refuse to sell to any such dealer because of failure to adhere to any such system of resale prices.

(6) Refusing or threatening to refuse to sell to any jobbers or wholesalers because of their having resold said products to retailers who shall have failed to maintain the resale prices fixed by respondent.

(7) Enforcing or threatening to enforce forfeiture of the stock of any of its jobber-stockholders for failure to maintain such resale prices.

(8) Securing or seeking to secure the cooperation of its jobber-stockholders or other dealers in maintaining or enforcing any system of resale prices whatsoever.

FEDERAL TRADE COMMISSION

v.

JOSEPH SIMMONDS, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF W. H. PRODUCTIONS CO.

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

Docket No. 210.—July 18, 1919.

SYLLABUS.

Where a concern engaged in the production, leasing, sale, and exhibition of motion pictures; with a tendency and capacity to mislead the motion-picture theater-going public—

(*a*) acquired a substantial number of motion pictures of a well-known actor, William S. Hart, which pictures had theretofore been exhibited throughout the United States and become well known under their respective titles to the motion-picture theater-going public;

(*b*) adopted a trade name of "W. H. Productions Co." without the knowledge or consent of said William S. Hart or of the "William S. Hart Productions, Inc.," through which latter company said Hart marketed his motion pictures exclusively;

(*c*) changed the title of the motion pictures so acquired; and

(*d*) advertised, held out, exploited, and exhibited such old pictures with their new titles, without indicating or notifying the motion-picture theater-going public that they had been retitled:

Held, That such simulation and deception constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Joseph Simmonds, doing business under the trade name and style of W. H. Production Co., 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 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 general public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., is a resident of the State of New York, with his principal office and place of business located at the city of New York, in said State, now and for more than one year last past engaged in the business of producing, leasing, selling, and exhibiting motion pictures generally in commerce throughout the various States of the United States, the Territories thereof, and the District of Columbia, in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the William S. Hart Productions, Inc., is a Delaware corporation, organized in July, 1917, with offices located at the city of New York, State of New York, and in the city of Los Angeles, State of California, engaged in the business of producing, selling, leasing, distributing, and advertising the motion pictures of one William S. Hart, a motion-picture actor; that such pictures are and have been advertised, distributed, and exhibited in the principal cities

and towns of the States of the United States, the Territories thereof, and the District of Columbia, and the name and pictures of the said William S. Hart, through long-continued advertising and exhibition, constitute and are well-established trade names used and controlled since July 1, 1917, exclusively by said William S. Hart Productions, Inc., and are advertised and commonly known and referred to as "Artcraft pictures."

PAR. 3. That William S. Hart, who resides in the city of Los Angeles, State of California, is a well-known motion-picture actor of national reputation and of unusual ability, who has been constantly before the public for several years and has established himself in the distinctive character of Hart productions, which said productions represent the investment and outlay of large sums of money; that for four years prior to July, 1917, the said William S. Hart was employed exclusively by the New York Motion Pictures Co. as a motion-picture actor in the production of motion pictures, which were extensively distributed throughout the States of the United States by The Triangle Film Co., acting as the distributing agent of said New York Motion Pictures Co., and such pictures became well and extensively known to the motion-picture theater-going public by their respective titles and names under which they were distributed, advertised, and exhibited; that since July, 1917, said William S. Hart has appeared only in pictures made and distributed by the said William S. Hart Productions, Inc.

PAR. 4. That the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., in September, 1917, with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, without the consent or knowledge of said William S. Hart or said William S. Hart Productions, Inc., adopted and assumed the trade name of W. H. Productions Co. and has ever since carried on and is now conducting his business under such trade name; that such simulation is calculated and designed to and does deceive exhibitors and the motion-picture theater-going public, and mislead them into the belief that W. H. Produc-

tions Co. and William S. Hart Productions, Inc., are one and the same.

PAR. 5. That within the year last past the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, has produced, sold, leased, advertised, and exhibited motion pictures of the said William S. Hart, which had been made, advertised, produced, and exhibited prior to July, 1917, as aforesaid, and has held out and advertised the same as being those of "The artcraft star"; that such simulation is calculated and designed to and does deceive and defraud exhibitors and the motion-picture theater-going public and mislead them into the belief that "The artcraft star" and "Artcraft pictures" are one and the same.

PAR. 6. That within the year last past the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, has produced, sold, leased, advertised, and exhibited motion pictures of the said William S. Hart, which had been made, advertised, produced, and exhibited prior to July, 1917, as aforesaid, under names and titles of the same character and similar or likened to those given to pictures produced, sold, leased, advertised, and exhibited by said William S. Hart Productions, Inc.; that such simulation is calculated and designed to and does deceive and defraud exhibitors and the motion-picture theater-going public, and mislead them into the belief that respondent's pictures and those of said William S. Hart Productions, Inc., are one and the same.

PAR. 7. That within the two years last past the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, has produced, sold, leased, exhibited, and advertised, and has offered to sell, lease, and exhibit motion pictures of Charlie Chaplin, William S.

Hart, and other well-known motion-picture actors and actresses, which had theretofore been exhibited to the public and whose titles and names were well known to the patrons of motion-picture theaters, under new names and titles without notifying, apprising, or informing exhibitors and the general public that they were such; that such practices are calculated and designed to and do defraud and deceive the exhibitors and general public and mislead them into the belief that said pictures are new and original and never before exhibited or produced.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered his appearance by Walter N. Seligsberg, Esq., his attorney, duly authorized to act in the premises, and having filed his answer admitting that certain matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, the Federal Trade Commission having presented testimony in support of its case before Hon. John R. Dowlan, examiner for the said Commission, and both parties, desiring to expedite this proceeding and to avoid the time and expense of further litigation, having entered into an agreed statement of facts, wherein is stipulated and agreed that the Federal Trade Commission shall proceed forthwith upon said agreed statement of facts to make and enter its report, stating its findings as to the facts and its conclusions and its order dispos-

ing of this proceeding without the introduction of further testimony or the presentation of argument in support of the same; now, therefore, the Commission makes and enters this, its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Joseph Simmonds, is a resident of the city and State of New York, with his principal office and place of business located at said city, now and at all times hereinafter mentioned doing business under the trade name and style of W. H. Productions Co., and for more than one year last past engaged in the business of producing, leasing, selling, and exhibiting motion pictures in interstate commerce throughout the various States of the United States, the Territories thereof, and the District of Columbia, in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That William S. Hart is a resident of the city of Los Angeles, State of California, and is a well-known motion-picture actor of national reputation and unusual ability, who has been constantly before the public for more than three years last past, and whose name and pictures, and the motion-picture plays in which he has appeared and their names and titles, have become well known to the motion-picture theater-going public throughout the States and Territories of the United States and the District of Columbia.

PAR. 3. That the William S. Hart Productions, Inc., is a corporation organized in July, 1917, under and by virtue of the laws of the State of Delaware, with offices located in the city and State of New York and at Los Angeles, State of California, engaged in the business of producing and selling the motion pictures in which the said William S. Hart appears, and that all the stock and share capital of said corporation save and except the qualifying shares for officers is owned by the said William S. Hart and one Thomas H. Ince, who is director of all said Hart motion pictures.

PAR. 4. That all of the motion pictures in which the said William S. Hart appears, made or produced since July, 1917, have been so made or produced by the said William

S. Hart Productions, Inc. Said pictures are hereinafter named and referred to as new pictures, and such new pictures have become well and extensively known to the motion-picture theater-going public by their respective titles under which they have been distributed, advertised, and exhibited.

PAR. 5. Respondent, Joseph Simmonds, in September, 1917, without the consent or knowledge of the said William S. Hart or said William S. Hart Productions, Inc., adopted and assumed the trade name of W. H. Productions Co. and has ever since conducted and carried on his business under such trade name.

PAR. 6. That during September, 1917, the respondent, Joseph Simmonds, acquired and still owns all the right, title, and interest in and to 21 motion pictures of the said William S. Hart which had been made or produced, and advertised, exhibited, shown, and exploited to the motion-picture theater-going public generally throughout the States of the United States, the Territories thereof, and the District of Columbia, prior to the 1st day of July, 1917, which said pictures are hereinafter named and referred to as old pictures.

PAR. 7. That since the acquisition of the aforesaid old pictures the respondent, Joseph Simmonds, has advertised, exploited, exhibited, and shown such old pictures to the motion-picture theater-going public throughout the States and Territories of the United States and the District of Columbia, under new names or titles, the old and new titles of such motion pictures being as follows, to wit:

Old titles.	New titles.
Fools of Providence.	Dakota Dan.
Cash Parish's Pal.	Double Crossed.
Keno Bates Liar.	The Last Card.
A Knight of the Trail.	A Knight of the Trail.
The Ruse.	A Square Deal.
Pinto Ben.	Horns and Hoofs.
Bad Buck of Santa Ynez.	The Bad Man.
Taking of Luke McVane.	The Fugitive.
The Roughneck.	The Gentleman from Blue Gulch.
The Man From Nowhere.	The Silent Stranger.
Mr. Silent Haskins.	The Marked Deck.
The Grudge.	The Haters.
Passing of Two Gun Hicks.	Taming the Fourflusher.

Old titles.	New titles.
In the Sage Brush Country.	Mr. Nobody.
Conversion of Frosty Blake.	The Convert.
Grit.	Over the Great Divide.
The Scourge of the Desert.	A Reformed Outlaw.
The Bargain.	The Two-Gun Man in the Bargain.
On the Night Stage.	The Bandit and the Preacher.
The Darkening Trail.	The Hell Hound of Alaska.
Conversion of Frosty Blake.	The Convert. Staking His Life.

PAR. 8. That the respondent, during the two years last past, has advertised, held out, exploited, and exhibited such old pictures with the new titles as aforesaid, without indicating, apprising, or notifying the motion-picture theater-going public that they had been retitled, and that this advertising, exploiting, and exhibiting aforesaid has had a tendency and a capacity to mislead the motion-picture theater-going public into the belief that such retitled pictures were different from the pictures theretofore issued under their original titles.

PAR. 9. That the respondent, Joseph Simmonds, has not held out and advertised motion pictures of the said William S. Hart as being those of "The Artcraft star."

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 1, 2, 3, 4, 5, 7, and 8, and each and all of them are under the circumstances therein set forth, 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 respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered his appearance by Walter N. Seligsburg, Esq., his attorney, duly authorized to act in the premises and having filed his answer admitting that certain matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and the Federal Trade Commission having presented testimony in support of its case before Hon. John R. Dowlan, examiner for the said Commission, and both parties desiring to expedite this proceeding and to avoid the time and expense of further litigation, having entered into an agreed statement of facts, wherein it is stipulated and agreed that the Federal Trade Commission shall proceed forthwith upon said agreed statement of facts to make and enter its report, stating its findings as to the facts and its conclusions and its order disposing of this proceeding without the introduction of further testimony or the presentation of argument in support of the same, and the Federal Trade Commission having entered and made its report stating its findings as to the facts and its conclusions 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Joseph Simmonds, doing business under the trade name and style of W. H. Productions Co., his agents, servants, and employees, cease and desist from directly or indirectly changing the titles and names of old motion-picture films which have been exhibited and displayed to the public by motion-picture exhibitors prior to the date said respondent secured them and substituted the names and titles for the same, unless it is

clearly, definitely, distinctly, and unmistakably shown to purchasers and lessees of motion-picture films and the motion-picture theater-going public that the motion-picture films so renamed and retitled are old motion-picture films and are reissued under new names and new titles.

FEDERAL TRADE COMMISSION

v.

CURTIS PUBLISHING COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 15.—July 21, 1919.

SYLLABUS.

Where a corporation engaged in the publication, distribution, and sale of periodicals entered into contracts with a large number of established wholesale dealers, and with other dealers who subsequently became wholesalers, constituting in most instances the principal and most efficient and, in numerous cases, the only medium for the distribution of such publications, whereby such dealers were bound not to, and did not, "act as agent for or supply at wholesale rates any periodicals other than those published" by the corporation without the written consent of such corporation, which consent was uniformly refused as to certain immediate competitors, and thus prevented competitors from utilizing established channels for the distribution and sale of their periodicals:

Held, That the use of such contracts, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914; and

That such contracts, under the circumstances set forth, had the effect of substantially lessening competition with the publisher's periodicals, tended to create a monopoly in the business of publishing magazines of the character of those published by the corporation in question, and constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Curtis Publishing Co., hereinafter referred to as respondent, has

been, and is, using unfair methods of competition in interstate commerce in violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," 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 Curtis Publishing Co., is a corporation organized and existing 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 said State, and is now, and was at all the times hereinafter mentioned and for many months prior thereto, engaged in the publication, sale, and circulation of weekly and monthly periodicals in commerce among the several States and Territories of the United States and the District of Columbia.

PAR. 2. That with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the publication, sale, and circulation of such periodicals, the respondent now refuses, and for several months last past has refused, to sell its periodicals and publications to any dealer who will not agree with the respondent that he will not sell or distribute the periodicals and publications of certain of the competitors of the respondent to other dealers or distributors.

II.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Curtis Publishing Co., hereinafter referred to as respondent, has violated, and is violating, the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Curtis Publishing Co., is a corporation organized and existing 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 said State, and is now and was, at all times hereinafter mentioned, and for many months prior thereto, engaged in the publication, sale, and circulation of weekly and monthly periodicals, in commerce among the several States and Territories of the United States and the District of Columbia.

PAR. 2. That the respondent, the Curtis Publishing Co., for several months last past, in the course of interstate commerce, has sold and made contracts for sale, and is now selling and making contracts for sale, of large supplies of its publications and periodicals for use and resale within the United States and the Territories thereof and the District of Columbia, and has fixed, and is now fixing, the price charged therefor on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the publications or periodicals of a competitor or competitors of respondent, and that the effect of such sales and contracts for sale, or such conditions, agreements or understandings, may be and is to substantially lessen competition and to tend to create a monopoly.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and evidence having been adduced by the respective parties to said proceeding, and the Commission having considered the same, together with the written briefs and arguments and the oral arguments of the attorneys for the said parties, and the Commission being now fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Curtis Publishing Co., is a corporation organized and existing 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, State of Pennsylvania, and is now, and was at all times hereinafter mentioned, and for many months prior thereto, engaged in the publication, sale, and distribution of weekly and monthly periodicals, in commerce among the several States and Territories of the United States and the District of Columbia.

PAR. 2. That in the course of such commerce the respondent has entered into contracts with certain persons, partnerships, or corporations to sell or distribute its magazines, by the terms of which contracts such persons, partnerships, or corporations have agreed, among other things, not to "act as agent for or supply at wholesale rates, any periodicals other than those published by the publisher"—the respondent herein—without the written consent of such publisher; that of such persons, partnerships, or corporations approximately 447, hereinafter referred to as "dealers," are and previous to entering into such contracts with respondent were regularly engaged in the business of wholesale dealers in newspapers or magazines, or both, and as such are, as aforesaid, engaged in the sale or distribution of magazines or newspapers, or both, of other publishers; that many of said 447 dealers, and many others who have become such wholesale dealers since entering into such contracts, bound by said contract provision as aforesaid, have requested respondent's permission to engage also in the sale or distribution of certain publications competing in the course of said commerce with those of respondent, which permission as to said competing publications has been uniformly denied by respondent; that in enforcing said contract provision as to said dealers and in denying them said permission, respondent has prevented and now prevents certain of its competitors from utilizing established channels for the general distribution or sale of magazines or newspapers, or both, of different and sundry publishers; that such established channels are in most instances the principal and most efficient and, in numerous cases, the only medium for the distribution of such publications in the various localities of the United States; that such method of competition so employed

by respondent in the course of such commerce as aforesaid has proved and is unfair.

PAR. 3. That in the course of such commerce the respondent has made sales of its magazines to or entered into contracts for the sale of the same with certain persons, partnerships, or corporations, by the terms of which sales or contracts for such sales such persons, partnerships, or corporations have agreed, among other things, not to "act as agent for or supply at wholesale rates any periodicals other than those published by the publisher"—the respondent herein—without the written consent of such publisher; that of such persons, partnerships, or corporations, approximately 447, hereinafter referred to as "dealers," are, and previous to entering into such contracts with respondent were, regularly engaged in the business of wholesale dealers in newspapers or magazines, and as such are engaged in the sale or distribution of magazines or newspapers, or both, of other publishers; that many of said 447 dealers, and many others who have become such wholesale dealers since entering into such contracts, bound by said contract provision hereinabove referred to, have requested respondent's permission to engage also in the sale or distribution of certain publications competing in the course of said commerce with those of respondent, which permission as to said competing publications has been uniformly denied; that in enforcing said contract provision as to said dealers and in denying them said permission respondent has prevented, and now prevents, certain of its competitors from utilizing established channels for the general distribution or sale of magazines or newspapers, or both, of different and sundry publishers; that such established channels are in most instances the principal and most efficient, and, in numerous cases, the only medium for the distribution of such publications in the various localities throughout the United States; that the effect of said contract provision has been and is to substantially lessen competition with respondent's magazines and tends to create for the respondent a monopoly in the business of publishing magazines of the character of those published by respondent.

CONCLUSIONS.

From the foregoing findings the Commission concludes that the method of competition set forth in paragraph 2 of said findings is, under the circumstances therein set forth, 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 the acts and conduct set forth in paragraph 3 of said findings are, under the circumstances therein set forth, 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the said respondent, Curtis Publishing Co., having filed its answer admitting certain allegations of the complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having offered testimony in its behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and facts in said proceeding, and the Commission having made and filed its report containing its findings as to the facts and conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Curtis Publishing Co., and its officers, directors, agents, and employees, cease and desist, while engaged in competition in commerce among the several States and Territories of the United States and

the District of Columbia, from entering into any contracts, agreements, or understandings with persons, partnerships, or corporations already engaged in the sale or distribution of the magazines or newspapers, or both, of other publishers, which provide that such persons, partnerships, or corporations shall not act as agents for, or sell, or supply to others at wholesale rates, any periodicals other than those of respondent without the written consent of respondent; and from entering into any contracts, agreements or understandings with persons, partnerships, or corporations already engaged in the sale or distribution of the magazines or newspapers, or both, of other publishers, which provide that such persons, partnerships, or corporations shall not sell or distribute, or shall not continue to sell or distribute the magazines or newspapers, or both, of other publishers; and from enforcing any provision which may be contained in any of respondent's present outstanding contracts with persons, partnerships, or corporations now engaged in the sale or distribution of magazines or newspapers, or both, of other publishers which provide that such persons, partnerships, or corporations shall not sell or distribute the magazines or newspapers, or both, of other publishers, or shall not sell or distribute the magazines or newspapers, or both, of other publishers without the written consent of respondent.

FEDERAL TRADE COMMISSION

v.

STANDARD OIL CO. OF INDIANA.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTIONS 2 AND 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 85.—July 21, 1919 (as modified Sept. 27, 1920).

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, doing 64 per cent of such business in its

territory, and also engaged in leasing pumps, tanks, and other equipment for the storage and handling of petroleum products in competition with manufacturers and sellers of such equipment, to its retail customers, of whom relatively very few required more than a single-pump outfit in the conduct of their business;

Leased to such retailers pumps, tanks, and equipment at a nominal rental, not affording it a reasonable profit on its investment, upon the condition that they should use the same only for the purpose of storing and handling its products, a practice having for its purpose the furtherance of the corporation's petroleum business, and resulting in loss of customers by competitors:

Held, (*a*) That the use of such leases constituted, under the circumstances set forth, an unfair method of competition, in violation of section 5 of the act of September 26, 1914, both as against competitors engaged exclusively in the petroleum business, and also as against competitors engaged in the manufacture and sale of such equipment;

(*b*) That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create for the corporation a monopoly in the business of selling petroleum products, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Standard Oil Co. of Indiana, 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 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, Standard Oil Co. of Indiana, is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its

principal office and place of business located at the city of Chicago, State of Illinois, and is now and for more than two years last past has been engaged in commerce in petroleum and in the manufacture, sale, and distribution of its products, as more fully alleged and set forth hereafter in this complaint, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Standard Oil Co. of Indiana, is engaged in the various branches of the business of purchasing petroleum in oil-producing districts of the United States; in causing to be shipped and transported crude oil from such districts through and into other States; in refining the petroleum and manufacturing it into various products; in shipping and transporting petroleum products through and into different States of the United States and in selling petroleum products in various places in the States of the United States; that after such products are so manufactured in various States of the United States they are continuously moved to, from, and among other States of the United States, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said products between and among the various States of the United States, and especially to and through the city of Chicago, State of Illinois, and therefrom to and through other States of the United States.

PAR. 3. That the respondent, Standard Oil Co. of Indiana, is one of several corporations with similar names and engaged in like business in different parts of the United States and in foreign countries, which resulted from and grew out of the dissolution of the Standard Oil Co. of New Jersey pursuant to a certain decree in equity made and entered by the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, on the 20th day of November, A. D. 1909, and affirmed by the Supreme Court of the United States on the 15th day of May, A. D. 1911; that such other corporations aforesaid are hereinafter referred to and mentioned as "other Standard companies."

PAR. 4. That the respondent confines the sale and distribution of its products, except as hereinafter set forth, largely to that area of the United States which lies within the borders of the States of Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, North Dakota, South Dakota, and Oklahoma, which territory is hereinafter referred to and mentioned as "its territory"; that "tank-wagon price" at all times hereinafter mentioned refers to and means the selling price of respondent's oils and gasoline in any locality within its territory from its tank wagons, which said price is based upon the Chicago tank-wagon price plus freight differentials from the point of shipment.

PAR. 5. That the respondent, Standard Oil Co. of Indiana, maintains a system in the contract and sale of its gasoline and kerosene products, whereby the same are shipped from its refineries to numerous stations or depots called tank-wagon stations, situated in different localities throughout its territory, and from these delivered direct into the storage tanks of its customers by means of tank wagons owned and operated by it, and with the intent, purpose, and effect of stifling and suppressing competition in the manufacture, sale, and distribution of petroleum products in interstate commerce, respondent refuses to, and does not, except to other Standard companies, sell and deliver its said products in carload lots or in such manner or quantity that the same can be diverted or reshipped to other territories where higher prices for such products prevail; that respondent sells and ships all of its surplus products to other Standard companies in different territories who do not interfere with the general business and marketing system of Standard companies generally, and that such system is designed and calculated to and does prevent customers in territories other than those of respondent from obtaining such products at and for a price as low as that maintained by respondent in its territory, plus freight differentials, which said price is kept by respondent below that of the market in localities of the United States outside of its territory.

PAR. 6. That the respondent, Standard Oil Co. of Indiana, with the purpose, intent, and effect of stifling and suppress-

ing competition in the manufacture, distribution, and sale of petroleum products in interstate commerce, refuses to and does not sell its products to independent jobbers or wholesalers in territories in which other Standard companies operate, but sells its surplus supply of oil and gasoline to such other Standard companies at prices below the tank-wagon prices maintained by it in its own territory, and sells other of its products through such other Standard companies at jobbers' discounts for resale in their respective territories.

PAR. 7. That in the conduct of its business, the respondent, Standard Oil Co. of Indiana, generally confines the sale of its products in its territory to retail distributors at wholesale or tank-wagon prices, who in turn resell the same to the consumers, but in certain local competitive areas within its territory where retail dealers do not handle the products of respondent in such quantities as desired by it, respondent has sold, and does sell, its products at wholesale or tank-wagon prices direct to such consumers, thereby punishing such retail dealers and compelling them to deal in the products of respondent under conditions and restrictions imposed by it.

PAR. 8. That the respondent makes a practice of loaning tanks and other necessary equipment used in the handling of its products to customers and prospective customers, both dealers and consumers, in competitive areas, upon the condition and agreement that the same shall be used exclusively in the storage and handling of the products of respondent; that such practice is designed and calculated to, and does, cause customers to confine their purchases exclusively to the products of respondent.

PAR. 9. That the respondent, Standard Oil Co. of Indiana, maintains a system of contracts named and designated as "Commission agency agreements," by the terms of which respondent is obligated to pay dealers 1 cent per gallon, measured at the pump, on all pump-selling products of respondent so handled by such dealers, as a rental for the necessary tanks and also for the dealers' services in handling its products, provided, and only provided, that such dealers

use or deal in respondent's products exclusively; where such dealers do not possess the necessary equipment therefor respondent furnishes the same, and where the dealer has equipment an additional monthly rental is paid for the exclusive use of the same in the sale of respondent's products.

PAR. 10. That the respondent maintains a system of contracts named and designated as "Commission agent agreements," by the terms of which the respondent is obligated to pay, and does pay, consumers in certain competitive areas, with but little or no opportunity to resell to other consumers, a commission, rebate, or discount of 1 cent per gallon on the outgo, provided, and only provided, such consumers use or deal in respondent's products exclusively, such commission being based and graded upon the total gallonage outgo from the storage tank, and respondent allows and pays such commission not only upon such gallonage resold by these customers, but also upon that used in addition thereto by them.

PAR. 11. That the respondent, through and by certain of its agents, servants, and employees, has in certain localities within its territory threatened to sell its products direct to consumers at dealers' prices, and that such threats were calculated and designed to intimidate such dealers and cause them to deal in the products of respondent in preference to those of its competitors.

PAR. 12. That the respondent, Standard Oil Co. of Indiana, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture, sale, and distribution of petroleum products in interstate commerce, sells its gasoline and kerosene products only to those dealers and agents who will handle and deal in the other products of respondent and who make diligent effort to cause the sale of the same to be as large as possible and who refrain from handling or dealing in the gasoline of any of respondent's competitors.

PAR. 13. That the respondent, through and by certain of its agents, servants, and employees, and by means of advertisements placed in newspapers, magazines, periodicals, and trade journals circulated generally through the States and Territories of the United States, the District of Columbia,

and foreign countries, has made certain statements and representations concerning the:

(*a*) Quality, grade, ingredients, and effectiveness of its products and those of certain of its competitors;

(*b*) Officers of competitive corporations and the officers of purchasing corporations which were not handling or dealing in the products of respondent;

(*c*) Alleged methods of certain of its competitors of selling their products by measures short of the amount purchased;

(*d*) Ability of certain of its competitors to continue in business and make deliveries of their products; and, further

(*e*) That in the event lubricating oils other than those of respondent were used upon certain agricultural machinery guarantees upon the same issued by the manufacturers thereof would not be binding;

(*f*) That certain of its products which were blends or mixtures of gasoline with heavier oils or a result of a "cracking process" where held out as gasoline;

and that such statements and representations were false and misleading and calculated and designed to deceive the trade and general public.

PAR. 14. That the respondent varies the price of petroleum products in different areas within its territory by selling such products at and for a lower price in highly competitive areas than that which it receives for similar products in areas where competition is less active, and in such areas renders services and incurs selling expenses for which no charge above the wholesale price is made to the customer, and which in more competitive areas are either not rendered or, if rendered, a charge therefor is added to the tank-wagon price.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Standard Oil Co. of Indiana, hereinafter referred to as the respondent, has violated and is violating the provisions of section 2 and section 3 of the act of Congress approved

October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal office and place of business in the city of Chicago, State of Illinois, and is now, and was at all times hereinafter mentioned, engaged in commerce in petroleum and in the manufacture, sale, and distribution of its products among the several States and Territories of the United States, as more fully alleged and set forth in paragraphs 1 and 2 of section 1 of this complaint.

PAR. 2. That the respondent, Standard Oil Co. of Indiana, for several years last past in the course of interstate commerce in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of petroleum products, which products are sold for use, consumption, or resale within the United States or the Territories thereof, and the District of Columbia, and the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

PAR. 3. That the respondent, Standard Oil Co. of Indiana, for several years last past in the course of interstate commerce in violation of section 3 of the Clayton Act, has sold and made contracts for sale, and is now selling and making contracts for sale, of large quantities of petroleum products for use, consumption, and resale in the United States, and has fixed and is now fixing the price charged therefor, or discount from or rebate upon such price, on the condition, agreement, or understanding that the purchasers thereof shall not use or deal with the goods, wares, merchandise, supplies, or commodities of a competitor or competitors of respondent, with the effect that such sales and contracts for sale, or such conditions, agreements, or understandings may be and are to substantially lessen competition and tend to create a monopoly.

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission, subject to its approval, an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved all the agreed statement of facts except paragraphs 4 and 5 for the purpose of this proceeding only, and having considered that portion approved, together with the arguments by counsel, and being now fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is now and has been since prior to 1912, a corporation, organized and existing under the laws of the State of Indiana, and doing business in said State and in the States of Michigan, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, South Dakota, North Dakota, and Oklahoma; that one of its principal offices and places of business is in the city of Chicago, State of Illinois; that during all of said time respondent has been and now is engaged in the business of refining crude petroleum into its various products, and in buying gasoline, and in transporting and marketing said products and gasoline, and in buying and selling and leasing pumps and tanks and their equipments; that during all of said period its refineries have been and now are located at Whiting, Ind., Wood River, Ill., Sugar Creek, Mo.; that in 1917, of all the business of the character of that done by respondent in the said territory approximately 64 per cent thereof was done by respondent, the same approximating in figures, $170,000,000; that 36 per cent of said business was done by others with whom respondent competed and now competes.

PAR. 2. That during all of the period since organization, said respondent has been and now is maintaining numerous

storage stations in the several States in which it operates, to which it ships from its said refineries refined oil and gasoline in tank cars; that the contents of said storage stations are drawn off into tank wagons or trucks, and either transported direct to purchasers thereof—generally in the same States—or transported direct to and sold from respondent's so-called service or filling stations in the same States; that carload lots of lubricating oil in barrels are shipped by respondent from its refineries to other States and placed in warehouses, from which such oil is sold and delivered in the original barrels and also in lesser quantities to purchasers in the same States; that respondent sells large quantities of petroleum products, to wit, lubricating and other refined oils and gasoline, in tank car lots at prices f. o. b. at its refineries.

That the respondent in the conduct of its business buys oil pumps and tanks and their equipment, hereinafter referred to as "equipment," in various States of the United States and sells and leases and delivers the same to various persons, firms, corporations, and copartnerships in various States other than those in which the said equipments are purchased by the respondent and from which they are delivered to the said users; that in the course of commerce in buying and selling said equipments, said equipments are moved to, through, and among various States of the United States; and that there is a constant current of trade in the conduct of its said business in buying and selling said equipments among said various States of the United States.

PAR. 3. That during all of said period, respondent in the course of commerce among the several States and Territories of the United States and the District of Columbia, and in the conduct of its business as aforesaid, and to further its particular business in the sale of its petroleum products, has been and now is selling and leasing to retailers of its petroleum products said "equipments" for use by such retailers in storing and handling respondent's said petroleum products; that respondent in leasing such equipments as aforesaid, has entered during said period and is now entering into contracts with lessees of the form attached to re-

spondent's answer as Exhibit A[1]; that the rental or lease charge provided by such contracts is but a nominal sum of money; and that no other consideration for the leasing of such equipments by respondent is provided for in said contract other than that hereinafter mentioned in paragraph 4 hereof; that such equipments are leased at nominal rentals as aforesaid to further respondent's petroleum business; that such rentals do not afford a reasonable profit to respondent on the amount invested in such equipments; that respondent leases such equipments in competition in interstate commerce with manufacturers of similar equipments who are engaged in the sale of the same in such commerce and who also do a substantial part of all the business done in such equipments in the territory in which respondent conducts its business; that the practice of leasing such equipments at a nominal rental is an unfair method of competition in interstate commerce as against its competitors engaged in the manufacture of such equipments and in the sale of the same for profit in the territory where respondent leases such equipments; and also as against any of its competitors engaged exclusively in the petroleum business.

PAR. 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 as a result of the leasing of such equipments by respondent in the manner and under the terms aforesaid its 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

[1] See p. 39.

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."

ORDER TO CEASE AND DESIST.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission subject to its approval an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved the agreed statement of facts, except paragraphs 4 and 5, for the purpose of this proceeding only, and having on consideration of the pleadings, the stipulation, and the arguments of counsel thereon made its report and findings as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of 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 respondent has violated 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," which report, findings, and conclu-

sions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, Standard Oil Co. of Indiana, shall 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.

Provided, *however*, That as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein, respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

It is also ordered, under and by virtue of the authority conferred on the Commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Standard Oil Co., respondent, shall, within 30 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, hereinabove set

forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are proposed to be put in use, and also attach to such report any contracts used by the respondent in the conduct of such business.

EXHIBIT A.

TANK LOAN AGREEMENT.

Agreement made at _____ this _____ day of _____, 191__, between the Standard Oil Company, a corporation of the State of Indiana, party of the first part, and _____, of _____ _____, part____ of the second part, witnesseth,

That whereas the said part____ of the second part, _____, now purchasing petroleum products from the said party of the first part, and _____ requested the said party of the first part to loan _____ tank ____ for the storage thereof; and

Whereas the said party of the first part has consented to loan this (these) tank____ to said part____ of the second part, for _____ _____ convenience and use in _____ business upon the terms and conditions hereinafter mentioned:

Now, therefore, in consideration of the purchase of its petroleum products by said part____ of the second part, said first party hereby does agree to furnish and loan to said part____ of the second part tank____ of the capacity of about _____ gallons, more or less, to be used by said part____ of the second part for the storage of petroleum products purchased from said party of the first part, and for no other purpose whatsoever.

It is expressly understood and agreed that said tank____ and all appliances connected therewith or used in connection with the same, furnished by said first party, shall at all times (except as hereinafter provided) be and remain the property of said party of the first part and shall be used by said part____ of the second part only for the purpose of holding and storing petroleum products purchased from the said party of the first part; and if said part____ of the second part shall at any time cease to purchase _____ petroleum products from said party of the first part, or shall use said tank____ for the storage of petroleum products purchased from any other person,

firm, or corporation, or for any other purpose than that herein specified, then the said party of the first part shall have the right to declare this agreement null and void, and said first party shall thereupon have the right and privilege, without notice to said part____ of the second part, to charge said tank____ and all appliances connected or used therewith, furnished by the first party, to the account of said part____ of the second part, at the sum of _____ dollars, which it is hereby mutually agreed is the reasonable value of said tank____ and appliances and connections, or, at its option, to enter upon the premises where said tank____ is (are) located, with men, horses, wagons, and such appliances as may be necessary, and remove therefrom said tank____ and connections and appliances furnished by said first party, without recourse to any legal proceedings for that purpose.

It is further expressly understood and agreed that in event of said tank____ being charged as aforesaid the amount so charged shall be due and payable forthwith.

The part ____ of the second part agrees to pay the party of the first part one dollar ($1.00) per month in advance on the first day of each month for the use of said tank____.

And in further consideration of the premises, said part____ of the second part, for _____ heirs, executors, administrators, and assigns, hereby agree____ to indemnify and save harmless the said party of the first part of and from any and all claims for liability for any and all loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of or from said tank____, or the appliances connected or used therewith, or through any imperfection in the construction, installation, or operation of the same, whether due to negligence of the party of the first part or otherwise.

And also, for _____ heirs, executors, administrators, and assigns, do ____ hereby expressly waive, relinquish, exonerate, discharge, and protect the said party of the first part from any and all liability for damages which may be suffered by _____ or _____ neighbors by reason of any leakage, fire, explosion, or other casualty occurring through any imperfection in said tank____ or the appliances connected therewith or from any other cause whatsoever.

Witnesses: STANDARD OIL COMPANY.
(Indiana.)

_____ By _____

_____ _____ [SEAL.]

The undersigned, owner____ of the premises upon which the above-described tank____ is to be or has been installed, hereby consent____ to the installation thereof and agree____ to be bound by the terms and conditions of the foregoing agreement.

_____ [SEAL.]

FEDERAL TRADE COMMISSION

v.

SOLOMON M. HEXTER, KAUFMAN W. HEXTER, TOBIAS FELDER, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF S. M. HEXTER & CO.

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

Docket 97.—September 12, 1919.

SYLLABUS.

Where a concern engaged in the manufacture and sale of a cotton fabric, the trade-mark of which included the word "Sol," but not the word "Satin," marketed and extensively advertised the same as "Sol Satin," without any other descriptive words indicating the nature of the fabric or the raw materials of which it was made, with a tendency thereby to mislead the public into the belief that the fabric in question was made either wholly or partly of silk:

Held, That such labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT:

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Solomon M. Hexter, Kaufman W. Hexter, Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., hereinafter referred to as the 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 complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., have

their principal office and place of business located at the city of Cleveland, State of Ohio, now and for more than two years last past engaged in the manufacture and sale of a cotton fabric among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondents purchase their fabric in England, and cause the same to be transported to the city of Cleveland, in the State of Ohio, where the same is sold and shipped to dealers in different States and Territories of the United States and the District of Columbia, for resale to the public; and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said fabric between and among the various States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Cleveland, State of Ohio, and from there to and through other States and Territories of the United States, and the District of Columbia.

PAR. 3. That the respondents, within the last year, with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the sale of cotton fabrics, have adopted the trade name of "Sol Satin," and have advertised, and are now advertising, and holding out to the public, its fabric as such; which simulation is designed and calculated to, and does, deceive and mislead the public and cause purchasers to believe that respondents' fabric is composed of silk.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, in which it is alleged that it had reason to believe that the above-named respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, have been and now are, using unfair methods of competition in inter-

state 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 that respect would be to the interest of the public and fully stating its charges in this respect, and respondents having entered their appearance by Edward D. Brown, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting certain allegations therein contained and denying others, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony and shall forthwith thereupon make its report stating its findings as to the facts, its conclusion, and its order disposing of this proceeding without the introduction of testimony or argument in support of the same, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion, as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondents, Solomon M. Hexter, Kaufman W. Hexter, and Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., have their principal office and place of business located at the city of Cleveland, State of Ohio, now and for more than two years last past engaged in the manufacture and sale of a cotton fabric among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondents purchase their fabric in England and cause the same to be transported to the city of Cleveland, in the State of Ohio, where the same is sold and shipped to dealers in different States and Territories of the United States and the District of Columbia for resale to the public, and that

there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said fabric between and among the various States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Cleveland, State of Ohio, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That in connection with the sale of the aforesaid cotton fabric the respondents have adopted and for a period of more than three years last past have used the trade name of "Sol Satin" as the name by which said fabric has been known and extensively advertised and sold in interstate commerce; that in the course of such advertising the respondents on June 22, 1915, registered in the United States Patent Office the trade-mark by which their said fabric has been and is known, which trade-mark consists of the fanciful word "Sol" appearing on a disk having radiant lines extending therefrom and representing the sun, below which appears the word "Satin," the latter word, however, being expressly disclaimed in the application, which trade-mark and the trade name "Sol Satin" without any other descriptive words indicating the nature of the fabric or the raw materials out of which said fabric is made have been extensively used in advertisements appearing in newspapers and magazines, on silk labels inserted in garments lined with said fabric, and on the back of the said fabric itself, and in other ways designed to bring said fabric to the attention of the purchasing public.

PAR. 4. That the word "satin," both in technical and popular usage, has a precise and exact meaning and is only properly used as the name of a fabric made either wholly or partly of silk and woven in a certain peculiar manner so as to impart a high luster to the surface of the fabric, though the word "satin," in the technology of the manufacturer, is sometimes used also to designate the kind of weave itself.

PAR. 5. That the word "satin" or "sateen," both in technical and popular usage, has a precise and exact meaning and is properly used as the name of a fabric of cotton in

satin weave and somewhat resembling satin; that the best grades of "satine" or "sateen" are also technically and popularly known as venetian cloth, to which latter class of fabrics the fabric of the respondents marketed under the name of "Sol Satin" properly belongs.

PAR. 6. That the use of the word "satin" in the aforesaid trade name and trade-mark of the respondents tends to deceive and mislead the public into the belief that the said fabric so sold by the respondents under the said trade name and trade-mark of "Sol Satin" was and is made either wholly or partly of silk.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Solomon M. Hexter, Kaufman W. Hexter, Tobias Felder, doing business under the firm name and style of S. M. Hexter & Co., having entered their appearance by Edward D. Brown, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence and in lieu of testimony in this case and proceed forthwith to enter its report stating its findings as to the facts, its conclusion, and its order without the introduction of testimony or argument in support of the same, and waiving therein any and all right to the introduction of such testimony, and the Federal Trade Commission having made

and entered its report stating its findings as to the facts and its conclusion, that the 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 said respondents cease and desist from advertising, labeling, holding out, and selling as satin the fabric heretofore advertised and sold by them under the trade name of "Sol Satin," and from using the word "satin" in any way to designate or describe said fabric or any fabric like or similar thereto.

FEDERAL TRADE COMMISSION

v.

STANDARD OIL CO. OF INDIANA.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 133.—September 12, 1919 (as modified Sept. 27, 1920).

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, doing 65 per cent of such business in its territory, and also engaged in leasing pumps, tanks, and other equipment for the storage and handling of petroleum products in competition with manufacturers and sellers of such equipment, to its retail customers, of whom relatively very few required more than a single pump outfit in the conduct of their business;

Leased to such retailers pumps, tanks, and equipment at a nominal rental, not affording it a reasonable profit on its investment, upon the condition that they should use the same only for the purpose of storing and handling its products, a practice having for its purpose the furtherance of the corporation's petroleum business, and resulting in loss of customers by competitors;

Held, (*a*) That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914, both as against competitors engaged exclusively in the petroleum business, and also as against competitors engaged in the manufacture and sale of such equipment;

(*b*) That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create for the corporation a monopoly in the business of selling petroleum products, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Standard Oil Co. of Indiana, 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 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, Standard Oil Co. of Indiana, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Chicago, State of Illinois; that said respondent is now and for more than one year last past has been engaged in commerce in petroleum and in selling and lending automatic measuring oil pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, which pumps, tanks, and other outfits and patented devices are products of Gilbert & Barker Manufacturing Co., of Springfield, Mass., throughout the States of the United States, the Territories thereof, the District of Columbia, and

foreign countries, in direct competition with other persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, manufactures its various products in its factories located in different States of the United States and purchases and enters into contracts of purchase for the necessary materials needed therefor in other States and Territories of the United States, causing the same to be transported to such factories where they are made into the finished products and sold and shipped to the purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been 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, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, for more than one year last past, by and through its agents, servants, and employees, has represented, stated, and held out to customers and prospective customers that the products of certain of its competitors were unsatisfactory, defective, would not operate, and were being sold by such competitors at exorbitant prices, and that such statements and representations were false, misleading, and defamatory, and calculated and designed to deceive the trade and general public.

PAR. 4. That the respondent for more than one year last past with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce has, by divers means and methods, induced and procured and attempted to induce and procure a large number of its customers and prospective customers and the customers and prospective customers of its competitors to cancel and rescind orders and contracts for the purchase of pumps, tanks, and other outfits placed and made with the competitors of the respondent.

PAR. 5. That the respondent for more than one year last past with the purpose, intent, and effect of stifling and sup-

pressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce has sold and lent pumps, storage outfits, and other products of the Gilbert & Barker Manufacturing Co. at and for prices below the cost of producing the same and which gave no adequate return upon such cost.

PAR. 6. That the respondent for more than one year last past with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce has threatened dealers using such products in the conduct of their business that they, the said respondent, would sell gasoline and oils direct to retail customers unless such dealers purchased and installed the outfits and products of the Gilbert & Barker Manufacturing Co.; that such threats were calculated and designed to intimidate such dealers and cause them to refrain from purchasing and installing the products of its competitors.

PAR. 7. That the respondent for more than one year last past, by and through its agents, representatives, servants, and employees, has represented, stated, and held out to its customers and prospective customers, and the customers and prospective customers of its competitors, that it is the agent of and dealer in the products of both the Gilbert & Barker Manufacturing Co. and their competitors, and have quoted excessive and exorbitant prices on the products of their competitors; that such statements and representations were false and misleading and calculated and designed to deceive the trade and general public and induce such customers and prospective customers to purchase and enter into contracts of purchase for the products of Gilbert & Barker Manufacturing Co.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Standard Oil Co. of Indiana, hereinafter referred to as respond-

ent, has violated and is violating the provisions of section 2 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," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Chicago, State of Illinois; that said respondent is now and for more than one year last past has been engaged in commerce in petroleum and in selling and lending automatic measuring pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, which pumps, tanks, and other outfits and patented devices are products of Gilbert & Barker Manufacturing Co., of Springfield, Mass., throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent for several years last past, in the course of interstate commerce, in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of pumps, tanks, and outfits for the storage and handling of inflammable liquids, which products are sold for use, consumption, or resale within the United States or the Territories thereof, and the District of Columbia, and the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above entitled proceeding, and the

respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission, subject to its approval, an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved such agreed statement of facts and having considered the same, and being now fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Standard Oil Co. of Indiana, is now and has been since prior to 1912 a corporation, organized and existing under the laws of the State of Indiana, and doing business in said State and in the States of Michigan, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, South Dakota, North Dakota, and Oklahoma; that one of its principal offices and places of business is in the city of Chicago, State of Illinois; that during all of said time respondent has been and now is engaged in the business of refining crude petroleum into its various products, and in buying gasoline, and in transporting and marketing said products and gasoline, and in buying and selling and leasing pumps and tanks and their equipments; that during all of said period, its refineries have been and now are located at Whiting, Ind.; Wood River, Ill.; and Sugar Creek, Mo.; that in 1917, of all the business of the character of that done by respondent in the said territory, approximately 65 per cent thereof was done by respondent, the same approximating in figures $170,000,000; that 35 per cent of said business was done by others with whom respondent competed and now competes.

PAR. 2. That during all of the period since its organization said respondent has been and now is maintaining numerous storage stations in the several States in which it operates, to which it ships from its said refineries refined oil and gasoline in tank cars; that the contents of said storage station are drawn off into tank wagons or trucks, and either transported direct to purchasers thereof—generally in the same States—or transported direct to and sold from respondent's so-called

service or filling stations in the same States; that carload lots of lubricating oil in barrels are shipped by respondent from its refineries to other States and placed in warehouses, from which such oil is sold and delivered in the original barrels and also in lesser quantities to purchasers in the same States; that respondent sells large quantities of petroleum products, to wit, lubricating and other refined oils and gasoline, in tank-car lots at prices f. o. b. at its refineries.

That the respondent, Standard Oil Co. of Indiana, in the conduct of its business, buys oil pumps and tanks and their equipments, hereinafter referred to as "equipments" in various States of the United States and sells and leases and delivers the same to various persons, firms, corporations, and copartnerships in various States other than those in which the said equipments are purchased by the respondent and from which they are delivered to the said users; that in the course of commerce in buying and selling said equipments, said equipments are moved to, through, and among various States of the United States; and that there is a constant current of trade in the conduct of its said business in buying and selling said equipments among said various States of the United States.

PAR. 3. That during all of said period respondent in the course of commerce among the several States and Territories of the United States and the District of Columbia, and in the conduct of its business as aforesaid, has been and now is selling and leasing to retailers of its petroleum products said "equipments" for use by such retailers in storing and handling respondent's said petroleum products; that respondent in leasing such equipments as aforesaid has entered during said period and is now entering into contracts with lessees of the form attached to and made a part of the stipulation herein and marked "Exhibit A"[1]; that the rental or lease charge provided by such contracts is but a nominal sum of money and that no other consideration for the leasing of such equipments by respondent is provided for in said contract other than that hereinafter mentioned in paragraph 4 hereof; that such equipments are

[1] See p. 56.

leased at nominal rentals as aforesaid to further respondent's petroleum business; that such rentals do not afford a reasonable profit to respondent on the amount invested in such equipments; that respondent leases such equipments in competition in interstate commerce with manufacturers of similar equipments who are engaged in the sale of the same in such commerce and who also do a substantial part of all the business done in such equipments in the territory in which respondent conducts its business; that the practice of leasing such equipments at a nominal rental is an unfair method of competition in interstate commerce as against its competitors engaged in the manufacture of such equipments and in the sale of the same for profit in the territory where respondent leases such equipments; and also as against any of its competitors engaged exclusively in the petroleum business.

PAR. 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 as a result of the leasing of such equipments by respondent in the manner and under the terms aforesaid, its 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."

ORDER TO CEASE AND DESIST.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to said Commission subject to its approval an agreed statement of facts in said cause in lieu of testimony, and the Commission having approved the agreed statement of facts, for the purposes of this proceeding only, and having on consideration of the pleadings and the stipulation made its report and findings as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of 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 respondent has violated 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," which report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, Standard Oil Co. of Indiana, shall 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.

Provided, however, That as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein, respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

It is also ordered, under and by virtue of the authority conferred on the Commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Standard Oil Co., respondent, shall within 20 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, hereinabove set forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are

proposed to be put in use, and also attach to such report any contracts used by the respondent in the conduct of such business.

EXHIBIT A.

TANK LOAN AGREEMENT.

Agreement made at _____ this _____ day of _____, 19____, between the Standard Oil Company, a corporation of the State of Indiana, party of the first part, and _____ of _____ part____ of the second part, witnesseth,

That whereas the said part____ of the second part ____ now purchasing petroleum products from the said party of the first part and _____ requested the said party of the first part to loan _____ tank____ for the storage thereof; and

Whereas the said party of the first part has consented to loan this (these) tank____ to said part____ of the second part, for _____ convenience and use in _____ business upon the terms and conditions hereinafter mentioned;

Now therefore, in consideration of the purchase of its petroleum products by said part____ of the second part, said first party hereby does agree to furnish and loan to said part____ of the second part, tank____ of the capacity of about _____ gallons, more or less, to be used by said part____ of the second part for the storage of petroleum products purchased from said party of the first part, and for no other purpose whatsoever.

It is expressly understood and agreed that said tank____ and all appliances connected therewith or used in connection with the same, furnished by said first party, shall at all times (except as hereinafter provided) be and remain the property of said party of the first part and shall be used by said part____ of the second part only for the purpose of holding and storing petroleum products purchased from the said party of the first part, and if said part____ of the second part shall at any time cease to purchase _____ petroleum products from said party of the first part or shall use said tank____ for the storage of petroleum products purchased from any other person, firm, or corporation, or for any other purpose than that herein specified, then the said party of the first part shall have the right to declare this agreement null and void and said first party shall thereupon have the right and privilege, without notice to said part____ of the second part, to charge said tank____ and all appliances connected or used therewith furnished by the first party, to the account of said part____ of the second part, at the sum of _____ dollars, which it is hereby mutually agreed is the reasonable value of said tank____

and appliances and connections, or, at its option, to enter upon the premises where said tank is (are) located, with men, horses, wagons, and such appliances as may be necessary, and remove therefrom said tank____ and connections and appliances furnished by said first party, without recourse to any legal proceedings for that purpose.

It is further expressly understood and agreed that in event of said tank____ being charged as aforesaid, the amount so charged shall be due and payable forthwith.

The part____ of the second part agrees to pay the party of the first part one dollar ($1.00) per month in advance on the first day of each month, for the use of said tank____.

And in further consideration of the premises, said part____ of the second part, for ______ heirs, executors, administrators, and assigns, hereby agree____ to indemnify and save harmless the said party of the first part, of and from any and all claims for liability for any and all loss, damage, injury, or other casualty to persons or property caused or occasioned by any leakage, fire, or explosion of or from said tank____, or the appliances connected or used therewith, or through any imperfection in the construction, installation, or operation of the same, whether due to negligence of the party of the first part or otherwise.

And also, for ______ heirs, executors, administrators, and assigns, do____ hereby expressly waive, relinquish, exonerate, discharge, and protect the said party of the first part from any and all liability for damages which may be suffered by ______ or ______ neighbors by reason of any leakage, fire, explosion, or other casualty occurring through any imperfection in said tank____, or the appliances connected therewith or from any other cause whatsoever.

Witnesses:

STANDARD OIL COMPANY.
(Indiana.)

---------- By ----------
---------- ---------- [SEAL.]

The undersigned, owner____ of the premises upon which the above-described tank____ is to be, or has been installed, hereby consent____ to the installation thereof, and agree____ to be bound by the terms and conditions of the foregoing agreement.

---------- [SEAL.]

FEDERAL TRADE COMMISSION

v.

J. FRANK BATES, DOING BUSINESS UNDER THE TRADE NAME AND STYLE OF MALZO COFFEE CO.

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

Docket 241.—September 12, 1919.

SYLLABUS.

Where a firm styling itself "Mazo Brothers" sold and distributed certain brands of coffee known as "Mazo Coffee," which trade name, through years of sale and advertising, had acquired a well-defined meaning and reputation with the purchasing public, and had become known as the product of said firm, and thereafter a competitor adopted and used the name "Malzo Coffee Co" and displayed the word "Malzo" on wagons, packages, advertising, and printed matter; with a tendency thereby to mislead and deceive the public into believing that the coffee of the new company was one and the same as that of the older concern:

Held, That such simulation of name, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co., hereinafter referred to as the respondent, has been and is 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing further 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, J. Frank Bates, is a resident of the District of Columbia, doing business under

the trade name and style of Malzo Coffee Co., with his principal office and place of business located at the city of Washington, in said District, now and for more than two years last past engaged in the sale and distribution of coffee, teas, spices, and similar products generally in commerce throughout different States of the United States and the District of Columbia, in direct trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That I. Joseph Mazo and Maurice H. Mazo are residents of the District of Columbia and copartners doing business under the firm name and style of Mazo Brothers, now and for more than two years last past engaged in the business of selling and distributing coffee; that since the year 1907 the said Mazo Bros. have sold and offered for sale to the trade and general public a certain brand of coffee for which they adopted the trade name and brand of "Mazo Coffee," which said trade name through years of sale and advertising has acquired a well defined meaning and reputation to the purchasing public, all of which is and was well known to the respondent herein.

PAR. 3. That the respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co., in the year 1914, with the purpose, intent and effect of stifling and suppressing competition in interstate commerce in the sale and distribution of coffee, adopted and assumed the trade name of Malzo Coffee Co., and ever since said date has sold, offered to sell, and advertised to the trade and general public coffee under such trade name and style; that such simulation is designed and calculated to and does deceive and mislead the trade and purchasing public and causes them to believe that respondent's coffee is one and the same as that of said Mazo Brothers.

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 respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co.,

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 that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered his appearance by Chapin Brown, Esq., his attorney, duly authorized to act in the premises, and having filed his answer admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony and shall forthwith thereupon make its report stating its findings as to the facts, its conclusion, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument therefor, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, J. Frank Bates, is a resident of the District of Columbia, doing business under the trade name and style of Malzo Coffee Co., having its principal office and place of business located in the city of Washington, in said District, and is now and for more than two years last past has been engaged in the sale and distribution of coffee, teas, spices, and similar products generally in commerce in the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That I. Joseph Mazo, and Maurice H. Mazo are residents of the District of Columbia and copartners doing business under the firm name and style of Mazo Brothers, and are now and for more than two years last past have been

engaged in the business of selling and distributing coffee and since the year 1907 have sold and offered for sale to the trade and general public certain brands of coffees for which was adopted and which are known by the brand name of "Mazo Coffee," which trade name through years of sale and advertising has acquired a well-defined meaning and reputation to the purchasing public and known to be the product of the aforesaid Mazo Brothers.

PAR. 3. That the respondent, J. Frank Bates, in the conduct of his business in the sale of coffee in the District of Columbia, during the past four years, has adopted and used the trade name of Malzo Coffee Co., and that the use of said trade name and the word "Malzo" displayed in certain type form and color on his wagons, packages, advertising, and printed matter tends to mislead and deceive the public into believing that the coffee is one and the same as that of Mazo Brothers.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co., having entered his appearance by Chapin Brown, Esq., his attorney duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts in which it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as evidence in this case and in lieu of testimony and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts, its conclusion, and its order

without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, J. Frank Bates, doing business under the trade name and style of Malzo Coffee Co., cease and desist from using the trade name "Malzo Coffee Co." or the brand name "Malzo" in connection with the sale of coffee in such way as to mislead and deceive the public into believing that the coffee of the respondent is one and the same as that of Mazo Brothers, and from using such trade name or brand name upon his wagons, packages, advertising, and printed matter, except in such type form and color, or with the addition of such other descriptive words as will clearly, definitely, and unmistakably show the purchasing public that the coffee of respondent is not one and the same as that of Mazo Brothers.

FEDERAL TRADE COMMISSION

v.

ROY C. DOWNS AND GEORGE W. LORD, DOING BUSINESS UNDER THE NAME AND STYLE OF THE ENGINEERING SUPPLY CO.

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

Docket 264.—September 12, 1919.

SYLLABUS.

Where a firm engaged in the manufacture and sale of boiler compounds, oils, and greases, gave and offered to give employees of its customers and prospective customers, and of its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money, as an inducement to influence the sale of its products to their employers;

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Roy C. Downs and George W. Lord, doing business under the name and style of Engineering Supply Co., hereinafter referred to as respondents, have been for more than a year last past 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 respondents, Roy C. Downs and George W. Lord, doing business under the name and style of Engineering Supply Co., having their office and place of business in the city of Philadelphia, State of Pennsylvania, are now and for more than two years last past have been engaged in manufacturing and selling a certain boiler compound and also oils and greases throughout the States and Territories of the United States, and that at all times hereinafter mentioned respondents have carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, Roy C. Downs and George W. Lord, doing business under the name and style of Engineering Supply Co., are engaged in the various branches of the business of manufacturing, selling, and distributing boiler compounds, oils, and greases throughout the States and Territories of the United States, the District of Columbia, and foreign countries; that in the course of such business they purchase the raw materials used in the manufacture of same in the various States of the United States and the District of Columbia, and move and transport the same to their

factory in the city of Philadelphia, where such raw materials are manufactured into boiler compound, oils, and greases, and that thereupon said respondents move and distribute the said boiler compound and other manufactured products so manufactured to and among the various States and Territories of the United States, the District of Columbia, and foreign countries; that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in such boiler compound, oils, and greases between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents, in the course of their business of manufacturing, selling, and distributing boiler compound, oils, and greases throughout the States and Territories of the United States, the District of Columbia, and foreign countries, as aforesaid, for more than two years last past have been secretly paying and offering to pay to employees of their customers and prospective customers, and customers and prospective customers of competitors, without the knowledge and consent of their employers, sums of money as inducements to influence their said employers to purchase or contract to purchase from the respondents boiler compound, oils, and greases, or to influence such customers and prospective customers to refrain from dealing or contracting to deal with competitors of the respondents.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, Roy C. Downs and George W. Lord, doing business under the name and style of the Engineering Supply Co., have been for more than one year last past 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 that respect would be to the

interest of the public, and fully stating its charges in that respect; and the respondents having entered their appearance by Illoway & Felix, their attorneys, and having filed their answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statements of facts which has been heretofore filed in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Roy C. Downs and George W. Lord, are doing business under the name and style of the Engineering Supply Co., having their office and principal place of business at the city of Philadelphia, State of Pennsylvania, and are now and for more than one year last past have been engaged in the manufacture and sale of boiler compounds, oils, and greases throughout the States and Territories of the United States in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, Roy C. Downs and George W. Lord, doing business under the name and style of the Engineering Supply Co., in the course of their business of manufacturing and selling boiler compounds, oils, and greases, have for more than a year last past given and offered to give to employees of their customers and prospective customers, and customers and prospective customers of competitors, without the knowledge and consent of their employers, sums of money, as inducements to influence the sale of their products to their employers.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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, and the respondents having entered their appearance by Illoway & Felix, their attorneys, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the 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, their agents, representatives, servants, and employees cease and desist from directly or indirectly:

Giving or offering to give employees of their customers or prospective customers or those of their competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondents boiler compounds, oils, greases, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondents, without other consideration therefor, sums or money or any other gratuity.

FEDERAL TRADE COMMISSION

v.

EMIL WEST, DOING BUSINESS UNDER THE NAME AND STYLE OF THE SWEATER STORE.

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

Docket 281.—September 12, 1919.

SYLLABUS.

Where a corporation dealt in men's and women's wearing apparel and knitted goods, as "The Sweater Shop, Inc.," after acquiring the trade name, good will, and business of an enterprise which as "The Sweater Shop" had established a successful business; and thereafter a competitor engaged in business as "The Sweater Store," and displayed such name on signs affixed to the outside of its store, in newspapers, and in other mediums, with the result that such simulation deceived and misled the public into believing that the more recent concern was one and the same business as the older:

Held, That such simulation of name, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Emil West, doing business under the name and style of "The Sweater Store," 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 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. The respondent is now and at all times herein mentioned has been engaged in conducting a mercantile store at the city of Washington, in the District of Co-

lumbia, and in selling men's and women's wearing apparel thereat in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. For many years prior to and during part of the year 1916 one Julius A. West, respondent's brother, was engaged in conducting a mercantile store at the city of Washington, in the District of Columbia, and in selling men's and women's wearing apparel and knitted goods thereat, under the trade name and style of "The Sweater Shop"; that such trade name became and is well known, and said Julius A. West established a successful business, especially in the sale of sweaters and other knitted goods, thereunder; that during the year 1916 said Julius A. West assigned and transferred to the corporation known as "The Sweater Shop, Inc., all of his right, title, and interest in and to such trade name and good will, together with the store fixtures and merchandise then being used in conducting the business so established by him thereunder; and that said corporation has ever since been and is now engaged in conducting said mercantile store and selling men's and women's wearing apparel and knitted goods thereat under the name of "The Sweater Shop, Inc., in direct competition with respondent.

PAR. 3. The respondent within the past two years has adopted and is now conducting his store under the name and style of "The Sweater Store," and advertising and displaying such name in signs affixed to the outside and inside of his store, in newspaper and various other forms of advertisements, and in divers other ways; that such simulation stifles and suppresses competition in the sale of men's and women's wearing apparel and knitted goods in the District of Columbia and deceives and misleads the public and causes purchasers and prospective purchasers of such wearing apparel and knitted goods to believe that respondent's store, firm, and business are one and the same as that of "The Sweater Shop, Inc.," and that they are dealing with and purchasing goods from respondent's competitor, "The Sweater Shop, Inc."

67 Findings.

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 respondent, Emil West, has been and now is using unfair methods of competition in the District of Columbia, 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 that respect, and the respondent having filed his answer, admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, the Commission now makes this its report and findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is now and at all times herein mentioned has been engaged in conducting a mercantile store at the city of Washington, in the District of Columbia, and in selling men's and women's wearing apparel thereat in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. For many years prior to and during part of the year 1916 one Julius A. West, respondent's brother, was engaged in conducting a mercantile store at the city of Washington, in the District of Columbia, and in selling men's and women's wearing apparel and knitted goods thereat under the trade name and style of "The Sweater Shop"; that such trade name became and is well known, and said Julius A. West established a successful business, especially in the sale of sweaters and other knitted goods, thereunder;

that during the year 1916 said Julius A. West assigned and transferred to the corporation known as "The Sweater Shop, Inc.," all of his right, title, and interest in and to such trade name and good will, together with the store fixtures and merchandise then being used in conducting the business so established by him thereunder; and that said corporation has ever since been and is now engaged in conducting said mercantile store and selling men's and women's wearing apparel and knitted goods thereat under the name of "The Sweater Shop, Inc.," in direct competition with respondent.

PAR. 3. The respondent within the past two years has adopted and is now conducting his store under the name and style of "The Sweater Store" and advertising and displaying such name in signs affixed to the outside and inside of his store, in newspapers and various other forms of advertisements, and in divers other ways; that such simulation stifles and suppresses competition in the sale of men's and women's wearing apparel and knitted goods in the District of Columbia and deceives and misleads the public and causes purchasers and prospective purchasers of such wearing apparel and knitted goods to believe that respondent's store, firm, and business are one and the same as that of "The Sweater Shop (Inc.)," and that they are dealing with and purchasing goods from respondent's competitor, "The Sweater Shop (Inc.)."

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts in paragraphs 1, 2, 3, and each and all of them, are, under the circumstances therein set forth, 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, and the respondent having entered his

appearance and having filed his answer admitting that the matters and things alleged and contained in said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its order disposing of this proceeding, without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusion as to the respondent having 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 part hereof: Now, therefore,

Be it ordered, That the respondent, Emil West, his agents, servants, and employees, cease and desist from directly or indirectly using the following trade name or combination of words, "The Sweater Shop," on signs, wrappers, stationery, newspaper or other advertisements, or in any manner whatsoever in connection with the sale, distribution, or exposition of men's and women's wearing apparel, or the use for said purpose or purposes of any other trade name or combination of words similar thereto, which tend to deceive and mislead purchasers, prospective purchasers, or the general public.

FEDERAL TRADE COMMISSION

v.

FEDERAL COLOR & CHEMICAL CO.

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

Docket 282.—September 12, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of dyestuffs, chemicals, soap, and kindred products—

(*a*) gave and offered to give to employees of customers and of prospective customers, gratuities consisting of liquor, cigars, meals, valu-

able presents, and other personal property, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors;

(*b*) gave and offered to give to employees of its customers and prospective customers, and of its competitors' customers and prospective customers, entertainment consisting of amusements and diversions of various kinds, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors; and

(*c*) gave and offered to give to employees of its customers and prospective customers, and of its competitors' customers and prospective customers, sums of money, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Federal Color & Chemical Co., 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 Federal Color & Chemical Co., a corporation organized and existing and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at the city of Boston, in the State of Massachusetts, is now, and for more than one year last past has been, engaged in manufacturing and selling dyestuffs, chemicals, soap, and kindred products throughout the States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and con-

ducted such business in competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling dyestuffs, chemicals, soap, and kindred products throughout the States and Territories of the United States the respondent is now, and for more than one year last past has been, secretly giving and offering to give to employees of both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent dyestuffs, chemicals, soap, and kindred products, without other consideration therefor, gratuities such as liquor, cigars, meals, valuable presents, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling dyestuffs, chemicals, soap, and kindred products throughout the 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 and loaning and offering to loan to employees of both its customers and prospective customers and its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent dyestuffs, chemicals, soap, and kindred products, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

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 respondent, the Federal Color & Chemical Co., 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 that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect, and the respondent having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Federal Color & Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its home office located at the city of Boston, in said State of Massachusetts, now and for more than one year last past engaged in the business of manufacturing and selling dyestuffs, chemicals, soap, and kindred products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent dyestuffs, chemicals, soap, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities consisting of liquor, cigars, meals, valuable presents, and other personal property.

PAR. 3. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, dyestuffs, chemicals, soap, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment consisting of amusements and diversions of various kinds and description.

PAR. 4. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent dyestuffs, chemicals, soap, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, sums of money.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 2, 3, 4, and each and all of them, are under the circumstances therein set forth, 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.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having filed its answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and

form therein set forth and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, the Federal Color & Chemical Co., and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly:

(1) Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent dyestuffs, chemicals, soap, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and other personal property.

(2) Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent dyestuffs, chemicals, soap, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

(3) Giving or offering to give employees of its customers or prospective customers, or those of its competitors' cus-

tomers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent dyestuffs, chemicals, soap, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, money.

NOTE.—The cases in the following table involve substantially the same set of facts as the preceding case, namely, gifts of money to and, in some instances, entertainment of, customers and prospective customers of the donor and of the donor's competitors; also in some instances the giving of gratuities, such as liquor, cigars, meals, presents, and other personal property to customers and prospective customers of the donor:

TABLE.

Date.	Dock. No.	Respondent.	Location.	Commodity.	Answer, stipulation, or trial.
1919					
Sept. 12	286	Harry Bentley (doing business as The Standard Soap Co.).	Camden, N. J...	Soap and kindred products.	Answer and consent.
12	287	Charles J. Fox.....	Philadelphia, Pa	.....do.....	Do.
12	288	J. L. Quimby (doing business as J. L. Quimby & Co.).	New York City..	Lubricating oils, greases, and kindred products.	Do.
12	290	Enterprise Soap Works, Inc.	Philadelphia, Pa	Soap.....	Do.
12	291	The Arabol Mfg. Co.	New York City..	Sizing, soap, glue, and kindred products.	Stipulation.
12	292	Roxbury Chemical Works, Inc.	Boston, Mass....	Soap and kindred products.	Answer and consent.
12	294	O. P. Olsen & Co., Inc.	New York City.	Grain, preserved meats, fish, rope, oil, paints, other ship supplies, and kindred products.	Do.
12	295	Edward P. Bosson and Nehemiah H. Lane (doing business as Bosson & Lane).	Quincy, Mass...	Dyes, soap, and kindred products.	Do.
12	300	Robert Cohn and Adolph Cohn (doing business as Lois Cohn & Sons).	Bayonne, N. J...	Meats, produce, and other food products, and supplies for ships.	Do.

FEDERAL TRADE COMMISSION

v.

WOODLEY SOAP MANUFACTURING CO.

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

Docket 289.—September 12, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of soap and kindred products, gave and offered to give to employees of its customers and prospective customers, gratuities such as cigars, meals, and entertainment as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Woodley Soap Manufacturing Co., 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 Woodley Soap Manufacturing Co., a corporation organized and existing and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business at the city of Boston, in the State of Massachusetts, is now and for more than one year last past has been engaged in manufacturing and selling soap and kindred products throughout the 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.

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

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 respondent, Woodley Soap Manufacturing Co., 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 that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect and the respondent having filed its answer admitting that it has occasionally given and offered to give cigars, meals, and entertainment to employees of customers and prospective customers, and praying that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same, the Commission makes this report and findings as to the facts and conclusion of law:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Woodley Soap Manufacturing Co., is a corporation organized, existing, and doing

business under and by virtue of the laws of the State of Massachusetts, with its home office located at the city of Boston, in said State of Massachusetts, now and for more than one year last past engaged in the business of manufacturing and selling soap and kindred products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, soap and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities consisting of cigars, meals, and entertainment.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to facts in paragraph 2 are, under the circumstances therein set forth, 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.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having filed its answer admitting that it has occasionally given and offered to give cigars, meals, and entertainment, and praying that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and the Commission hav-

ing made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

Be it ordered, That the respondent, Woodley Soap Manufacturing Co., and its officers, directors, agents, servants, and employees cease and desist from directly or indirectly giving or offering to give employees of its customers or prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent soap and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities, such as cigars, meals, and entertainment, or other gratuities.

NOTE.—The cases in the following table involve substantially the same set of facts as the preceding case, namely, gifts of liquor, cigars, meals, and entertainment to employees of customers and prospective customers of the donor, and, in one case, of the donor's competitors, as an inducement to influence their employers to purchase the donor's goods, and, in most instances, to refrain from dealing with its competitors:

TABLE.

Date.	Dock. No.	Respondent.	Location.	Commodity.	Answer, stipulation, or trial.
1919.					
Sept. 12	296	Dobbins Soap Mfg. Co.	Philadelphia, Pa	Soap and kindred products.	Answer and consent.
12	297	India Alkali Works.	Boston, Mass....	Savogran, washing powders, and kindred products.	Do.
12	299	U. S. Oil & Supply Co.	Providence, R.I.	Oil, soap, and mill supplies.	Do.
24	285	The Original Bradford Soap Works, Inc.	.....do.....	Soap and kindred products.	Stipulation.
1920.					
an. 29	495	The Henry Johnson Co.	Jersey City, N.J.	Engine packings, engine supplies, and similar products.	Answer and consent.

FEDERAL TRADE COMMISSION

v.

F. E. ATTEAUX & CO., INC.

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

Docket 86.—September 24, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of dyestuffs and chemicals—

(*a*) systematically and on a scale far beyond customary social entertainment and hospitality gave to employees of customers and prospective customers, and of competitors' customers and prospective customers, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and entertainment, as an inducement for them to influence their employers to purchase its goods and to refrain from dealing with its competitors;

(*b*) secretly, systematically, and on a large scale paid to employees of customers and prospective customers, and of competitors' customers and prospective customers, without the knowledge or consent of their employers, large sums of money as an inducement for them to influence their employers to purchase its goods and to refrain from dealing with its competitors; and

(*c*) secretly loaned to employees of customers and prospective customers, and of competitors' customers and prospective customers, without the knowledge or consent of their employers, large sums of money as an inducement for them to influence their employers to purchase its goods and to refrain from dealing with its competitors:

Held, That the making of such gifts, payments, and loans, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that F. E. Atteaux & Co., hereinafter referred to as respondent, has been for more than a year last past 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, 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, F. E. Atteaux & Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of Boston, in the State of Massachusetts, and is now and for more than one year last past has been engaged in manufacturing and selling dyestuffs and chemicals throughout the States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling dyestuffs and chemicals throughout the States and Territories of the United States the respondent for more than one year last past has been, systematically and on a large scale, giving and offering to give to employees of both its customers and prospective customers and its competitors' customers and prospective customers as an inducement to influence their employers to purchase or contract to purchase from the respondent dyestuffs and chemicals, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling dyestuffs and chemicals throughout the States and Territories of the United States the respondent for more than one year last past has been systematically and on a large scale secretly paying and offering to pay to employees of both its customers and prospective customers and its competitors' customers and prospective customers, without the knowledge and consent of their employers and without other consideration therefor, large sums of money as an induce-

ment to influence their said employers to purchase or contract to purchase from the respondent dyestuffs and chemicals or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

PAR. 4. That in the course of its business of manufacturing and selling dyestuffs and chemicals throughout the States and Territories of the United States the respondent for more than one year last past has been systematically and on a large scale secretly loaning and offering to loan to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers and without other consideration therefor, large sums of money as an inducement to influence their said employers to purchase from the respondent dyestuffs and chemicals or to influence such customers to refrain from dealing or contracting to deal with the competitors of the respondent.

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 has reason to believe that the above-named respondent, F. E. Atteaux & Co., Inc., has been, and 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondent, having entered its appearance by its attorney, Francis M. Carroll, and testimony having been introduced on behalf of the Commission and the respondent, and the attorneys for the Commission and the respondent having submitted briefs as to the law and the facts, waiving oral argument to the Commission thereon, the Commission makes this report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, F. E. Atteaux & Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business in the city of Boston in the State of Massachusetts, and is now, and for more than one year last past has been, engaged in manufacturing dyestuffs and chemicals and selling same throughout the States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, F. E. Atteaux & Co., Inc., in the course of its business of manufacturing and selling dyestuffs and chemicals throughout the several States of the United States and the District of Columbia, for more than one year last past has been giving systematically and on a scale far beyond ordinary social entertainment and hospitality, to employees of both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase from respondent dyestuffs and chemicals and to influence such customers to refrain from dealing with competitors of the respondent, without other consideration therefor, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling dyestuffs and chemicals in interstate commerce throughout the various States and Territories of the United States the respondent for more than one year last past has been systematically and on a large scale secretly paying to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge or consent of their employers and without other consideration therefor, large sums of money as an inducement to influence their employers to purchase or contract to purchase from respondent dyestuffs and chemicals, and further to prevent such customers and purchasers

from dealing or contracting to deal with competitors of respondent.

PAR. 4. That respondent, in the course of its business of manufacturing and selling dyestuffs and chemicals throughout the States and Territories of the United States and the District of Columbia for more than one year last past secretly loaned to employees of both its customers and prospective customers and its competitors' customers and prospective customers, without the knowledge or consent of their employers, and without other consideration therefor, large sums of money as an inducement to influence their said employers to purchase from respondent dyestuffs and chemicals, and to refrain from purchasing said commodities from competitors of respondent.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, 4, and each and all of them, are under the circumstances therein set forth, 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.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, F. E Atteaux & Co., Inc., having filed its answer admitting certain allegations of the complaint and denying certain others thereof, and testimony having been introduced on behalf of the Commission and the respondent, and the attorneys for the Commission and the respondent having submitted briefs as to the law and facts in said proceeding, waiving oral argument thereon, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, F. E. Atteaux & Co., Inc., its officers, directors, agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(1) Giving or offering to give to employees of customers and prospective customers or to employees of its competitors' customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent dyestuffs, chemicals, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and other personal property; and entertainment, consisting of amusements or diversions of any kind whatsoever.

(2) Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, dyestuffs, chemicals, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, sums of money or any other gratuity.

(3) Loaning or offering to loan to employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, dyestuffs, chemicals, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, money.

FEDERAL TRADE COMMISSION

v.

THE ROYAL CINEMA CORPORATION, THE MOTHERS OF LIBERTY PICTURES CO., AND MONOPOLE PICTURES CO.

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

Docket 208.—September 24, 1919.

SYLLABUS.

1. Where a corporation and a natural person, engaged in the business of producing, selling, and leasing motion-picture films, respectively—

(*a*) produced and distributed a picture called "Mothers of Liberty," made up in large part of film from a certain picture which, as "The Ordeal," had become well known to motion-picture dealers and to the general public;

(*b*) failed to indicate in their advertising matter accompanying said picture that a portion of the same had already been shown as "The Ordeal" (the film itself giving no notice to that effect); and

2. Where an individual engaged in the business of selling, leasing, exploiting, and exhibiting motion-picture films and advertising matter—

(*a*) sold, exploited, and exhibited said "Mothers of Liberty" to motion-picture exhibitors and the motion-picture theater-going public without apprising them of the fact that a portion of the same had been previously shown as "The Ordeal";

(*b*) distributed advertising and publicity matter in connection with the exploiting and exhibiting of said "Mothers of Liberty" pictures, also without indicating that a part thereof had already been shown as "The Ordeal";

With the result that the various acts above set forth misled the motion-picture theater-going public into the belief that said "Mothers of Liberty" was new, and had never theretofore been shown or exhibited; and where said person

(*c*) falsely accused a motion-picture exhibitor, who refused to lease and exhibit the said "Mothers of Liberty" because a large portion of the picture had already been shown, of being disloyal to the Government and a German sympathizer:

Held, That such relabeling, advertising, and sales, and such false accusations, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Royal Cinema Corporation, the Mothers of Liberty Pictures Co., and Monopole Pictures 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 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, the Royal Cinema Corporation, The Mothers of Liberty Pictures Co., and Monopole Pictures Co. are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, with their principal offices and places of business located at the city of New York, in said State, now and at all times hereinafter mentioned engaged in the business of producing, leasing, selling, and exhibiting motion pictures generally in commerce throughout the various States of the United States, the Territories thereof, and the District of Columbia in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That on October 22, 1914, a motion picture entitled "The Ordeal" was registered in the United States Copyright Office, its registration number being L-3574, and thereafter such picture was shown and exhibited throughout the States of the United States and became well and generally known to motion-picture dealers or exhibitors and to the general public.

PAR. 3. That the respondents, the Royal Cinema Corporation, The Mothers of Liberty Pictures Co., and Monopole Pictures Co., for more than one year last past, with the purpose, intent, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, have produced, sold, leased, exhibited, and advertised, and

offered to sell, lease, exhibit, and advertise, a certain motion picture named and styled "Mothers of Liberty," which is made almost entirely of the aforesaid copyrighted picture, "The Ordeal," without notifying, apprising, or informing exhibitors and the general public that it was such; that such practices are calculated and designed to and do defraud and deceive the trade and the motion-picture theater-going public, and mislead them into the belief that said "Mothers of Liberty" is a new and original picture, never before exhibited or produced.

PAR. 4. That within the year last past the respondents, the Royal Cinema Corporation, The Mothers of Liberty Pictures Co., and Monopole Pictures Co., with the purpose, intent, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, have threatened and accused certain motion-picture dealers or exhibitors of refusing to lease, book, or exhibit said "Mothers of Liberty" picture for the reason that they, the said dealers or exhibitors, were German sympathizers and disloyal to the Government of the United States of America; that such accusations were false and defamatory, calculated and designed to hinder, harass, embarrass, and restrain such dealers or exhibitors in the conduct of their business.

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, the Royal Cinema Corporation, the Mothers of Liberty Pictures Co., and Monopole Pictures Co., have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the Federal Trade Commission act, and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondents having entered their appearance by Harry G. Kosch, Esq., their attorney, duly authorized to act in the premises, and having filed their several answers admitting

certain of the matters and things alleged in the said complaint and denying others therein contained, and thereafter the respondents, the Royal Cinema Corporation and Monopole Pictures Co., having entered into an agreed statement of facts wherein it was stipulated and agreed that the Commission should proceed forthwith upon the same to make and enter its report and findings and order without the introduction of testimony or the presentation of argument, and thereafter the Commission, pursuant to notice, having taken testimony in support of the charges in its complaint against the respondent, the Mothers of Liberty Pictures Co., in the city and State of New York, before Alfred P. Thom, examiner of aforesaid Commission, and the said respondent, the Mothers of Liberty Pictures Co., having failed to appear at such hearing before said examiner, and having made default, the Commission now makes and enters this its report, stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That Royal Cinema Corporation 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 at the city of New York in said State.

PAR. 2. That the respondent, George Merrick, is a resident of the city of New York, State of New York, doing business under the registered trade name of Monopole Pictures Co., with his principal office and place of business located in said city and State.

PAR. 3. That said respondents are now and for more than one year last past have been engaged in the business of producing, selling, and leasing motion-picture films generally in commerce throughout the various States of the United States, the Territories thereof, and the District of Columbia in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 4. That on October 22, 1914, a motion-picture entitled "The Ordeal" was registered in the United States Copyright Office, its registration number being L–3574, and

thereafter such picture was shown and exhibited throughout the States of the United States and became well and generally known to motion-picture dealers and to the general public.

PAR. 5. That the respondent, Royal Cinema Corporation, within the year last past, purchased the negative of said motion picture, "The Ordeal," from the owners thereof and thereafter made and purchased a picture named or known as "Mothers of Liberty," which consisted of six reels of approximately 5,000 feet of motion-picture films, which was made up of approximately 2,200 feet of motion-picture film of the aforesaid picture named and styled "The Ordeal."

PAR. 6. That after the production of said "Mothers of Liberty" picture by the respondent, Royal Cinema Corporation, said respondent turned over the rights to distribute prints of same to the respondent, George Merrick, doing business under the registered trade name of Monopole Pictures Co., and the said Merrick, as distributor of the same, sold and leased positive prints of said pictures generally in commerce throughout various States of the United States.

PAR. 7. That the advertising matter produced by the respondents and which accompanied said picture contained no indication whatsoever that a portion of the same had been taken from the picture named and styled "The Ordeal," and there was no notice given in the picture film itself to this effect.

PAR. 8. That the Mothers of Liberty Picture Co. is the registered trade name under which the respondent, Clara Mainthau, whose residence, office, and principal place of business is in the city and State of New York, has for more than one year last past engaged in the business of selling, leasing, exploiting, and exhibiting motion-picture films and advertising matter to be used in connection with the same in different parts of the States of New York and New Jersey.

PAR. 9. That the respondent, Clara Mainthau, within the two years last past has advertised, sold, leased, exploited, and exhibited and offered to sell, lease, exploit, and exhibit the above-mentioned and described the "Mothers of Liberty" picture to motion-picture exhibitors and the motion-theater-going public in the States of New York and New Jersey

without apprising them of the fact that a portion of said picture had been previously shown and exhibited under the name or title of "The Ordeal."

PAR. 10. That the respondent, Clara Mainthau, within the two years last past has sold, distributed, and circulated, and offered to sell, distribute, and circulate bill posters, heralds, slides, and other advertising and publicity matter used in connection with the exploiting and exhibiting of said the "Mothers of Liberty" picture, which contained no indication, statement, or reference whatsoever that a portion of the same had previously been shown and exhibited to [the] public under the name or title of "The Ordeal."

PAR. 11. That said "Mothers of Liberty" picture, when produced, sold, leased, and advertised as aforesaid and exhibited to the motion-theater-going public, had the capacity, tendency, and effect of causing such public to be misled into the belief that all of such picture was new and had never theretofore been shown or exhibited to the motion-theater-going public, whereas, in truth and in fact, approximately 2,200 feet of the film constituting the picture called the "Mothers of Liberty" was not new film but was taken from and a part of the aforesaid picture named and styled "The Ordeal."

PAR. 12. That within the two years last past an agent and representative of the respondent, Clara Mainthau, while acting within the scope of his authority, threatened and accused at the city of Hoboken, State of New Jersey, a certain motion-picture exhibitor or dealer who refused to lease, book, exploit, and exhibit the said the "Mothers of Liberty" picture of being disloyal to the Government of the United States and a German sympathizer; that said exhibitor was a loyal American citizen and refused to lease, book, exploit, and exhibit such picture for the reason that a large portion of the same had theretofore been exploited and exhibited under the name and title of "The Ordeal."

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 1 to 12, inclusive,

and each and all of them, are under the circumstances therein set forth, 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.

The Federal Trade Commission having issued and served its complaint herein and the respondents having entered their appearance by Harry G. Kosch, their attorney, duly authorized to act in the premises, and having filed their several answers, and the respondents, the Royal Cinema Corporation and the Monopole Pictures Co., having stipulated and agreed that the Commission should proceed to forthwith make and enter its report and findings and order on a certain agreed statement of facts heretofore filed without the introduction of testimony or argument, and the Commission having introduced testimony in support of its complaint against the respondent, The Mothers of Liberty Pictures Co., pursuant to notice before a duly authorized examiner of said Commission, and such respondent having defaulted and failed to appear before said examiner, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the 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, the Royal Cinema Corporation, George Merrick, doing business under the registered trade name of Monopole Pictures Co., and Clara Mainthau, doing business under the registered trade name of The Mothers of Liberty Pictures Co., all of the city and State of New York, their agents, servants, representatives, and employees cease and desist from directly or indirectly advertising, selling, leasing, exploiting, and exhibiting to motion-picture exhibitors and the motion-picture theater-

going public motion-picture films under new names or titles which have been composed or made, in whole or in part, of films theretofore shown and exhibited to the public unless it is clearly, distinctly, definitely, and unmistakably shown to the purchasers, lessees, or exhibitors, and the motion-theater-going public, both in the motion-picture films themselves and in the advertising and publicity matter sold and used in connection therewith that such films have theretofore been shown, exhibited, and exploited, in whole or in part, under other names or titles.

It is further ordered, That the respondent, Clara Mainthau, of the city and State of New York, doing business under the registered trade name of The Mothers of Liberty Pictures Co., her agents, representatives, servants, and employees cease and desist from directly or indirectly accusing or threatening to accuse of disloyalty to the Government of the United States motion-picture exhibitors who refuse to purchase or lease for exhibition from such respondent motion-picture films for the reason that the same have theretofore been shown and exhibited to the public under other names or titles.

FEDERAL TRADE COMMISSION

v.

JAMES B. SCHAFER, TRADING UNDER THE NAME AND STYLE OF THE UNIVERSAL BATTERY SERVICE CO. AND UNIVERSAL BATTERY SERVICE CO., INC.

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

Docket 256.—September 24, 1919.

SYLLABUS.

Where a corporation, engaged for years in the manufacture and sale of storage batteries for automobile ignition and lighting purposes, first as the "Universal Storage Battery Co." and afterwards as the "Universal Battery Co.," acquired an extensive good will in

the use of the word "Universal" as applied to such storage batteries, and thereafter two competitors, representing chiefly the same interest—

(*a*) adopted the names, respectively, of "Universal Battery Service Co." and "Universal Battery Service Co., Inc.," with the result that the public was misled into believing that their batteries were those of the older corporation; and

(*b*) advertised that the "Universal" battery sold by them would "last forever"—the rest of the advertisement disclosing that a form of service was offered—a misleading claim, calculated and designed to injure the Universal Battery Co., the original producer of "Universal" batteries:

Held, That such simulation of names, and such false and misleading advertising, under the circumstances set forth, constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that James B. Schafer, trading under the name and style of the Universal Battery Service Co., 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 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, James B. Schafer, is now and was at all times hereinafter mentioned operating a business at 1192 Jefferson Avenue east, in the city of Detroit, in the State of Michigan, under the trade name and style of the Universal Battery Service Co.; that the business so conducted includes, among other things, the manufacture and sale in commerce among the several States of the United States of batteries for automobile ignition and lighting; that in November, 1916, the date on which said respondent began to operate under the name and style of the Universal Battery Service Co., the Universal Battery Co., a corpora-

tion organized under the laws of Illinois, with principal place of business in Chicago, in said State, had an established business in the State of Michigan and adjoining States in the manufacture and sale in interstate commerce of batteries for automobile ignition and lighting.

PAR. 2. That said respondent, with the intent, purpose, and effect of misleading the public and inducing the public to believe that the business which respondent was establishing was the business of the Universal Battery Co., adopted as his trade name the corporate name of said Universal Battery Co. with only the word "Service" added.

PAR. 3. That the respondent, with the purpose, intent, and effect of imitating the Universal Battery Co. in his advertisements in newspapers, trade journals, directories, and other publications, has adopted a style and color scheme resembling that previously adopted and then in use by the Universal Battery Co., which advertisements by respondent were calculated to and did cause confusion and have led the purchasing public who purchase batteries in interstate commerce to deal with the respondent upon the mistaken belief that they were dealing with the Universal Battery Co.

PAR. 4. That the said respondent in his advertisements makes the false claim that the batteries sold by him last forever, which claim is calculated and does injure and embarrass competitors of respondent in the sale of their products in commerce among the several States, and particularly embarrasses and injures the Universal Battery Co., the original producer of "Universal" batteries.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having duly issued and served upon the above-named respondents its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, James B. Schafer, trading under the name and style of Universal Battery Service Co., 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 fully stating its charges in that respect, and the same having been subsequently amended by making the Universal Battery Service Co., Inc., a party respondent, and both and each of said respondents having entered appearance and filed answer to said complaint of said Commission, and the said respondents having filed an agreed statement of facts, wherein it was stipulated and agreed that the facts stated therein should be treated as evidence and with the same force and effect as if testified to upon a formal hearing regularly had in this proceeding, oral testimony having been taken before an examiner of the Commission, and transcript of which has been filed in said docket, and said further testimony having been taken at a regular hearing after due notice to the respondents, and both parties having waived filing of briefs and presentation of argument before the Commission, now therefore the Federal Trade Commission makes and enters this report, stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, James B. Schafer, trading under the name and style of Universal Battery Service Co., for about two years prior to October, 1918, was engaged in the business of manufacturing, leasing, and selling storage batteries for automobile ignition and lighting, with his principal office and place of business in the city of Detroit and State of Michigan; that in or about the month of October, 1918, the said respondent, James B. Schafer, caused said business to be incorporated under the laws of the State of Michigan under the name of Universal Battery Service Co., Inc., and that said corporation is principally owned and controlled by the said James B. Schafer; that said respondent corporation has continued and is now continuing the former business conducted by the said James B. Schafer and has continued to manufacture, lease, and sell storage batteries for automobile ignition and lighting in

competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That both and each of said respondents, in the course and conduct of business, lease and sell said storage batteries for automobile ignition and lighting purposes throughout the various States and Territories of the United States by means of advertising in newspapers having interstate circulation and by means of circulars distributed throughout the various States, and that there has been at all times a constant current of trade and commerce in said storage batteries in interstate commerce.

PAR. 3. That the Universal Storage Battery Co. is a corporation organized under the laws of the State of Illinois more than 10 years ago and prior to the date that the above-named respondent engaged in said business; that more than six years ago and prior to the use of the name Universal Battery Service Co. by James B. Schafer in connection with his business in the manufacture, lease, and sale of storage batteries, the name of said Universal Storage Battery Co. was legally changed to Universal Battery Co., and that said last-named company did manufacture, lease, and sell storage batteries for automobile ignition and lighting purposes throughout the various States and Territories in the United States and did extensively advertise its product under said name through the various States and Territories, including the city of Detroit and State of Michigan, and did have and acquire an extensive good will in the use of the word "Universal" as applied to storage batteries for said purposes.

PAR. 4. That about the month of November, 1916, the said respondent, James B. Schafer, began and has up to the present time either individually or through the respondent, Universal Battery Service Co., Inc., a corporation, continued to sell said storage batteries for automobile ignition and lighting purposes in interstate commerce, as aforesaid, under the said trade name of Universal Battery Service Co. and in competition with the Universal Battery Co.; that by reason of the similarity of trade names certain confusion has arisen among purchasers buying storage batteries from both and each of said parties; that there has been confusion in the delivery and sale of storage batteries; that the similarity in

said trade names is such as to deceive and mislead prospective customers and has deceived and misled the trade and general public and caused persons to believe that the batteries sold and delivered by each of the respondents were the batteries manufactured, sold, and leased by the said Universal Battery Co., a corporation organized under the laws of the State of Illinois.

PAR. 5. That the said respondents in their advertisements make the claim that the batteries sold by them last forever. That no storage battery has yet been manufactured which will not wear out; that it appears that the respondents indicate by their advertisements that the "Universal" batteries sold by them "last forever"; that by reading the remainder of the advertisement it is shown respondents offer a form of service in that the purchaser pays 50 cents per month and is entitled to a new battery as soon as the old one is worn out; that the claim as made by respondents with reference to "Universal" batteries is misleading and calculated and designed to injure the Universal Battery Co., the original producer of "Universal" batteries.

CONCLUSIONS.

That the said methods of competition set forth in the foregoing findings as to facts and each and all thereof under the circumstances herein set forth constitute unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and other duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having duly issued and served upon the above-named respondent, James B. Schafer, trading under the name and style of Universal Battery Service Co., its complaint herein on the 8th day of March, 1919, wherein it alleged that it had reason to believe that said respondent has been and now is 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, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondent and said co-respondent, Universal Battery Service Co., a corporation organized under the laws of the State of Michigan, having each duly entered appearance and filed answer to said complaint of the Commission, and each of the said respondents thereafter being desirous of expediting the disposition of this matter, having entered into an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith use said statement of facts as evidence to make and enter its report, stating its findings as to the facts and its conclusions, and the Commission having referred said cause to one of its examiners for further hearing and taking of evidence, and said further hearing having been held and evidence taken after due notice of such further hearing, and said Commission having made and filed its report, stating its findings as to the facts and its conclusions, that the respondents, James B. Schafer, trading under the name of the Universal Battery Service Co. and Universal Battery Service Co., Inc., have violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," said report being hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondents, James B. Schafer, trading under the name and style of the Universal Battery Service Co. and Universal Battery Service Co., Inc., and respondents' agents, representatives, servants, and employees forever cease and desist from directly or indirectly—

(1) Using, employing, or readopting the word "Universal" in the conduct of its business in the manufacture and sale of storage batteries as a part of its corporate or trade name or in its advertising matter, circulars, billheads, or otherwise.

(2) Representing by advertisement or otherwise that "Universal" batteries "last forever."

FEDERAL TRADE COMMISSION

v.

TWIN CITY PRINTERS' ROLLER CO.

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

Docket 257.—September 24, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of rollers for printing presses—

(*a*) gave and offered to give to employees of customers and prospective customers gratuities consisting of liquor and cigars, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors;

(*b*) made loans, which were not expected to be, and were not, repaid, to employees of its customers and of its competitors' customers and prospective customers, without the knowledge and consent of their employers, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

Held, That such gifts and loans, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Twin City Printers' Roller Co., hereinafter referred to as respondent, has been for more than a year last past, 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 Twin City Printers' Roller Co., is a corporation organized and existing and

doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at the city of Minneapolis, in said State of Minnesota, and is now and for more than one year last past has been engaged in manufacturing and selling rollers for printing presses and similar products throughout the States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling rollers for printing presses and similar products throughout the States and Territories of the United States the respondent for more than one year last past has been giving and offering to give to employees of both its customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent rollers for printing presses and similar products, without other consideration therefor, gratuities such as liquors, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling rollers for printing presses and similar products throughout the States and Territories of the United States the respondent for more than one year last past has been secretly paying and offering to pay to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent rollers for printing presses and similar products or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

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 respondent, the Twin City Printers' Roller Co., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by A. M. Breding, duly authorized to act in the premises, and having filed its answer admitting certain allegations of said complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having offered testimony in denial of said charges in said complaint, and the attorneys for the Commission and the respondent having waived the presentation of brief 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 report and findings as to the facts and submits its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Twin City Printers' Roller Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at the city of Minneapolis, State of Minnesota, and is now and for more than one year last past has been engaged in manufacturing and selling rollers for printing presses in various States of the United States in competition with other persons, firms, partnerships, and corporations manufacturing and selling like products.

PAR. 2. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent rollers for printing presses and similar products or to influence such employers to re-

frain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities consisting of liquor and cigars.

PAR. 3. That for more than one year last past the respondent has made loans of money to employees of its customers and to employees of its competitors' customers and prospective customers, without the knowledge and consent of their employers, which were not expected to be repaid and were not repaid, but in truth and fact were gifts as an inducement to influence their employers to purchase or to contract to purchase from the respondent rollers for printing presses and similar products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 2, 3, and each and all of them, are under the circumstances therein set forth 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 respondent, the Twin City Printers Roller Co., 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 that a proceeding by it in respect to such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by A. M. Breding, its attorney.

and having duly filed its answer admitting certain allegations of said complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and respondent having offered testimony in denial of said charges in said complaint, and the attorneys for the Commission and the respondent having waived the presentation of briefs and arguments as to the law and the facts in said proceeding, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered by the Commission, That the respondent, the Twin City Printers Roller Co., and its officers, directors, agents, servants, and employees cease and desist from directly or indirectly—

(1) Giving or offering to give gratuities of any kind, including cigars and liquor, to employees of its customers or prospective customers or to employees of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent printers' rollers and other articles sold by respondent or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent.

(2) Giving or offering to give or loaning or offering to loan, without other consideration therefor, money to employees of its customers or prospective customers and to employees of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase printers' rollers and other products from the respondent or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent.

FEDERAL TRADE COMMISSION

v.

ARNE MEYER, DOING BUSINESS UNDER THE NAME AND STYLE OF MARINE SUPPLY CO.

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

Docket 301.—September 24, 1919.

SYLLABUS.

Where a concern engaged in the sale of lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships—

(*a*) paid to employees of customers, without the knowledge and consent of their employers, sums of money as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors;

(*b*) gave to employees of customers and of competitors' customers and prospective customers, gratuities such as liquor, cigars, meals, and entertainment, as an inducement for them to influence their employers to purchase its goods:

Held, That such payments and gifts, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Arne Meyer, doing business under the name and style of Marine Supply Co., hereinafter referred to as respondent, has been for more than a year last past 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, Arne Meyer, doing business under the name and style of Marine Supply Co.,

with his principal office and place of business at the city of New York, in the State of New York, is now and for more than one year last past has been engaged in selling lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships throughout the 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.

PAR. 2. That in the course of his business of selling lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships throughout the 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 employees of both his customers and prospective customers, and his competitors' customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships, without other consideration therefor, gratuities, such as liquor, cigars, meals, and entertainment.

PAR. 3. That in the course of his business of selling lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships throughout the 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 to employees of both his customers and prospective customers, and his competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Arne Meyer, doing business under the name and style of Marine Supply Co., hereinafter referred to as respondent, has been for more than one year last past 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 thereto would be to the interest of the public, and having issued and served a complaint fully stating its charges in that respect, and the respondent having filed his answer denying that certain matters and things alleged in said complaint are true in the manner and form therein set forth, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having offered testimony in his behalf, and the attorney for the Commission and Arne Meyer, the respondent, having waived the right to submit briefs as to the law and the facts or to present argument: Now, therefore, the Commission makes this report and findings as to the facts and submits its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Arne Meyer, doing business under the name and style of Marine Supply Co., is an individual having his principal office and place of business at the city of New York, in the State of New York, and is now, and for more than one year last past has been, engaged in selling lifeboats, liferafts, motor boats, gas engines, machinery and other supplies for ships throughout the States and Territories of the United States in competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That the respondent, Arne Meyer, doing business under the name and style of Marine Supply Co., in the

course of his business of selling lifeboats, liferafts, motor boats, gas engines, machinery and other supplies for ships throughout the States and Territories of the United States has, for more than one year last past, been paying to employees of his customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent lifeboats, liferafts, motor boats, gas engines, machinery and other supplies for ships, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

PAR. 3. That the respondent, Arne Meyer, doing business under the name and style of Marine Supply Co., in the course of his business of selling lifeboats, liferafts, motor boats, gas engines, machinery and other supplies for ships throughout the States and Territories of the United States, has, for more than one year last past, given to employees of his customers and to employees of his competitors' customers and prospective customers, as an inducement to influence their employers to purchase from the respondent lifeboats, liferafts, motor boats, gas engines, machinery and other supplies for ships, without other consideration therefor, gratuities such as liquor, cigars, meals, and entertainment.

CONCLUSIONS.

That the methods set forth in the foregoing findings of fact, under all the circumstances therein set forth, are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, Arne Meyer, doing business under the name and style of Marine Supply Co., having filed his answer denying that certain matters and things alleged in said complaint are true in the manner and form therein set forth, and the Commission having offered

testimony in support of its charges in said complaint, and the respondent having offered testimony in his behalf, and the attorney for the Commission and the respondent having waived the right to submit briefs as to the law and the facts in said proceeding or to present argument, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof; Now, therefore,

It is ordered, That the respondent, Arne Meyer, his agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Giving or offering to give to employees of his customers or prospective customers, or employees of any of his competitors' customers or prospective customers, money, cash bonuses or commissions, without other consideration therefor, as an inducement to influence their employers to purchase or to contract to purchase from said respondent, Arne Meyer, lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships, or to influence such employers to refrain from dealing or contracting to deal with any competitor of said respondent.

(2) Giving or offering to give to employees of his customers or prospective customers, or employees of any of his competitors' customers, or prospective customers, gratuities, such as liquor, cigars, meals, valuable presents, other than money, or entertainment, consisting of amusements or diversions of any kind whatsoever, without other consideration therefor, as an inducement to influence their employers to purchase or to contract to purchase from said respondent, Arne Meyer, lifeboats, liferafts, motor boats, gas engines, machinery, and other supplies for ships, or to influence such employers to refrain from dealing or contracting to deal with any competitor of said respondent.

NOTE.—The cases in the following table involve substantially the same set of facts as the preceding case, namely, payments of money to employees of customers, and, usually, prospective customers, of the donor, and, frequently, of the donor's competitors, without the knowledge and consent of their employers, as an inducement for them to influence their employers to purchase the donor's goods, and also, as a rule, to refrain from dealing with its competitors. The cases likewise involve in many instances other forms of gratuities, such as liquor, cigars, meals, and different kinds of entertainment:

TABLE.

Date.	Dock. No.	Respondent.	Location.	Commodity.	Answer, stipulation, or trial.
1919.					
Nov. 29	284	William Morhmann	New York City..	Chemicals, dyestuffs, textile soap, and similar products.	Trial.
29	447	New York Woodfinisher's Supply Co., Inc..	.....do.....	Oils, shellac, varnishes, glue, analines, and kindred products.	Answer and consent.
Dec. 30	415	Sterling Wallace....	.....do.....	Printing ink and kindred products.	Trial.
1920.					
Jan. 7	464	Flitner-Atwood Co.	Boston, Mass....	Ship supplies...	Answer and consent.
7	471	C. Bischoff & Co., Inc.	New York City..	Dyestuffs and chemicals.	Do.
29	465	John Campbell & Co.	.....do.....	.....do.....	Do.
29	466	Holliday-Kemp Co., Inc.	.....do.....	.....do.....	Do.
29	498	Joseph B. McDonagh, Leo A. McDonagh (doing business as William McDonagh & Sons).	.....do.....	Paints, varnishes, and kindred products.	Do.
Feb. 5	463	John McAteer.....	Philadelphia, Pa.	Groceries, meats, provisions, and other ship supplies.	Stipulation.
25	467	A. Klipstein & Co..	New York City..	Dyestuffs and chemicals.	Trial.
25	469	Geigy Co., Inc.....	.....do.....	.....do.....	Do.
25	521	H. Behlen & Bro., Inc.	.....do.....	Paint, varnish, and kindred products.	Answer and consent.
25	527	Andreykovicz & Dunk, Inc.	Philadelphia, Pa.	Dyestuffs, chemicals, and similar products.	Do.

Complaint.

FEDERAL TRADE COMMISSION

v.

A. T. McCLURE, ARTHUR W. McCLURE, JOHN R. McCLURE, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF A. T. McCLURE GLASS CO.

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

Docket 212.—September 25, 1919.

SYLLABUS.

Where a partnership engaged in selling window glass, with the result of misleading certain customers—

(*a*) habitually removed the "quality slips" indicating the grade of glass, sometimes placed by the manufacturer inside the containers or boxes, and changed the labeling or stenciling on the outside of such boxes to indicate higher and more expensive grades of glass than they contained;

(b) sometimes labeled or stenciled on the outside of the boxes a higher grade than they contained, to correspond with customers' orders, together with the name of a defunct glass manufacturing concern, but never, up to some two years ago, placed their own name on the boxes;

(c) habitually bought window glass of a certain, definite grade, and sold the same as and for a higher or better grade to customers who ordered and paid for such higher grade:

Held, That such mislabeling and such misrepresentation, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that A. T. McClure, given name unknown to this Commission, Arthur W. McClure, and John R. McClure, doing business under the firm name and style of A. T. McClure Glass 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 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 are now and were at all times hereinafter mentioned, residents of the State of Pennsylvania, with their principal office, factory, and place of business located at the town of Reynoldsville, in said State, now and for more than two years last past engaged in the business of acting as jobbers in the sale of window glass generally in commerce throughout various States of the United States, the Territories thereof, and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That, in the window-glass industry, all glass is sold by the manufacturer to the jobber in carload lots and is packed and shipped in boxes, and is graded, marked, and branded by the manufacturer as follows, to wit: AA for first quality, A for second, B for third, and C for fourth, or what is commonly known and called in the trade as "culls"; that the manufacturers of such glass pack the same in boxes in which are inclosed slips of paper known as "quality slips," which indicate the grade or quality of the glass contained in such boxes, and such boxes are branded, marked, or labeled with the various letters indicating the grade of the glass contained therein, and the jobber resells such glass to retailers at and for prices varying as to the grade of the glass, receiving prices for the highest grades that are higher than those received for the lower grades.

PAR. 3. That the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, for more than one year last past in the conduct of their business, with the intent, purpose, and effect of stifling and suppressing competition in the sale and distribution of window glass in interstate commerce, have purchased glass from manufacturers as aforesaid and have systematically and continuously opened such boxes in which said glass was contained and removed therefrom such quality slips and changed the brands or

marks upon such boxes, marking those containing lower grades of glass to read and indicate that their contents are composed of higher and better grades of glass, and have then sold such misbranded glass to their various customers at and for the prices obtained for the brands as shown and indicated on such changed boxes; that such practices are calculated and designed to, and do, defraud and deceive the trade and general public and mislead them into the belief that they are receiving from said respondents the quality or grade of glass for which they pay.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein and the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, copartners, doing business under the firm name and style of A. T. McClure Glass Co., having appeared and filed their answer, and the cause having been referred to a duly qualified examiner, before whom the testimony was introduced, and counsel for the Commission and the respondents having heretofore prepared and filed their respective briefs and waived any and all right to present oral argument in support of the same, and the Commission having considered such pleadings, testimony, and briefs, and being duly advised in the premises, now makes and enters this its report, stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, are now and for more than two years last past have been copartners doing business under the firm name and style of A. T. McClure Glass Co., having their residence, office, and principal place of business in the town of Reynoldsville, State of Pennsylvania, engaged in selling window glass generally in commerce throughout various States of the United States and Canada in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That these respondents at all times herein mentioned have carried on and conducted their business by buying window glass in carload lots from the manufacturers thereof, causing the same to be transported in and to their warehouse in said town of Reynoldsville, where it is unloaded and then sold and shipped in different quantities to dealers, and in the year 1918 these respondents sold glass to customers in 14 States of the United States and the Province of Ontario, Canada.

PAR. 3. That in the window-glass industry there are four grades of glass denoting quality or clearness, to wit: AA, or first; A, or second; B, or third, and C, or fourth; and the glass is bought and sold by the manufacturers, jobbers, and dealers upon the basis of these quality grades, and the prices obtained therefor vary according to the different grades, the higher grades bringing higher prices.

PAR. 4. That window glass is separated or assorted into the above-mentioned grades by the manufacturer and packed in wooden boxes, upon the outside of which is labeled, stenciled, or marked the manufacturer's name and the grade of glass contained therein. Some manufacturers also inclose inside the boxes pieces of paper termed "quality slips," upon which is printed the manufacturer's name and the grade in conformity with the labels on the outside of such boxes, and after the glass has been thus assorted and packed it is shipped or delivered to the purchasers thereof.

PAR. 5. That for more than two years last past the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, have made a practice of buying window glass of a certain, definite grade from manufacturers thereof and removing the quality slips from the inside of the boxes and changing and raising the labels on the outside of such boxes to read and indicate that a higher grade of glass was contained therein, and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

PAR. 6. That for more than two years last past the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, have made a practice of buying window glass of a

certain, definite grade from manufacturers thereof and without opening the boxes or altering the contents thereof changing and raising the labels or stencils on the outside of such boxes to read and indicate that a higher grade of glass was contained therein and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

PAR. 7. That for more than one year prior to the 1st day of June, 1918, the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, in the conduct of their business made a practice of buying window glass from the manufacturers thereof and selling the same to customers, packed in wooden boxes, upon the outside of which they marked, labeled, or stenciled the grade of glass called for by such customers' orders, together with the name of the Centerville Glass Co., a defunct glass-manufacturing concern, which had long since ceased to operate or do business, and at no time prior to said 1st day of June, 1918, did these respondents use a label, stencil, or mark bearing their own name or that of their company.

PAR. 8. That for more than two years last past the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, have made a practice of buying window glass of a certain, definite grade from manufacturers thereof and selling the same as and for that of a higher or better grade to customers who ordered and paid for such higher grade.

PAR. 9. That by various means and methods heretofore described and set forth in the above and foregoing paragraphs 5 to 8, inclusive, the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, in commerce aforesaid for more than two years last past, have caused certain of their customers to believe that they were receiving window glass of a certain, definite grade and price when in truth and in fact such glass was of a lower grade and price.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 5, 6, 7, 8, 9, and each and all of them, are under the circumstances

therein set forth 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."

SUBSTITUTE ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, A. T. McClure, Arthur W. McClure, and John R. McClure, copartners, doing business under the firm name and style of A. T. McClure Glass Co., having appeared and filed their answer, and the cause having been referred to a duly qualified examiner, before whom the testimony was introduced, and counsel for the commission and the respondents having heretofore prepared and filed their respective briefs and waived any and all right to present oral argument in support of the same, and the Commission having considered such pleadings, testimony, and briefs, and the Commission having made and filed its report, containing its findings as to the facts and its conclusions that the 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, A. T. McClure, Arthur W. McClure, and John R. McClure, of Reynoldsville, State of Pennsylvania, copartners, doing business under the firm name and style of A. T. McClure Glass Co., their representatives, agents, servants, and employees cease and desist from directly or indirectly—

(1) Buying window or other kinds of sheet glass of a certain definite grade from manufacturers thereof, and removing the quality slips from the inside of the boxes and changing the labels on the outside of such boxes to read and indicate a higher grade of glass contained therein, and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

(2) Buying window or other kinds of sheet glass of a certain definite grade from manufacturers thereof, and without opening the boxes or altering the contents thereof changing the labels or stencils on the outside of such boxes to read and indicate that a higher grade of glass is contained therein, and then selling and shipping or delivering the same to customers who ordered and paid for such higher grade.

(3) In any manner falsely marking or labeling window or other kinds of sheet glass, or the box in which the same is sold or shipped, as to the grade, quality, size, thickness, or weight of the glass.

(4) Selling glass to customers packed in boxes upon the outside of which is marked, labeled, or stenciled any other than the true name of the manufacturer, jobber, or shipper thereof.

And it is further ordered, That said respondents, A. T. McClure, Arthur W. McClure, John R. McClure, copartners, doing business under the firm name and style of A. T. McClure Glass Co., shall within 30 days from 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.

WILLIAM H. BATCHELLER, GEORGE BATCHELLER, and AKRON TIRE CO., INC.

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

Docket 253.—September 25, 1919.

SYLLABUS.

Where a corporation and two individuals owning the majority of the stock thereof—

(*a*) advertised automobile tires rebuilt or reconstructed from partially worn and discarded tires from which the name and brand or mark of the original maker had been obliterated, and a new name or brand stamped thereon according to the agency through which such

tires were offered for sale, with a tendency thereby to mislead the purchasing public into believing that such tires were new and manufactured in accordance with the processes generally employed by manufacturers of standard automobile tires;

(*b*) failed in their advertising matter clearly to disclose that the goods were rebuilt;

(*c*) sold such tires without advising purchasers that they were not new but were composed in part of used or reclaimed material; and

(*d*) advertised that if a tire failed to give 4,000 miles' service such tire would be replaced at half price, thereby tending to create the impression among users that the tires could reasonably be expected to give a service of 4,000 miles:

Held, That such sales, rebranding, and advertisements, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., 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 complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Akron Tire Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located at the city of Long Island City, in said State, with branch offices in other States of the United States; that William H. Batcheller and George Batcheller control a majority of the capital stock and are the dominant and controlling factors in the aforesaid corporation; that all of the said respondents are now and at all times hereinafter mentioned have been engaged in the business of selling automobile tires of the character and in the manner hereinafter mentioned in com-

petition with manufacturers and dealers in automobile tires among the several States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. That in the conduct of their business respondents purchase old and discarded automobile tires in various States and Territories of the United States and transport the same through other States and Territories of the United States in and to the city of Long Island City, State of New York, and their other branch offices located in various States where they are made and manufactured into a finished product and sold and shipped to purchasers thereof; that after such products are so remade and manufactured they are continuously moved to, from, and among other States of the United States, the Territories thereof, and the District of Columbia, and there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia to and through the city of Long Island City in said State, and from there to and through other States of the United States and Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents are now and for more than a year last past have been engaged in purchasing old and discarded automobile tires and causing them to be repaired and coated with a thin coating of rubber or composition of similar appearance for the purpose of enabling said tires to be offered to the public for sale in the manner hereinafter more specifically mentioned.

PAR. 4. That the respondents for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, as aforesaid, secured old and discarded automobile tires of various makes and bearing various trade names or brands, and in the process of having said tires repaired by said coating of rubber or composition the name of the maker of such tire and the original mark or

brand is caused to be removed or concealed, and caused to be remarked or restamped with new names or brands, such new names or brands depending upon the medium through which the said tires are to be offered for sale; that the remarking or restamping of said new names or brands upon old and discarded or worn tires, as aforesaid, and advertising them under such new names is calculated and designed to and does mislead and deceive purchasers and prospective purchasers to believe that said tires offered for sale by respondents are new tires manufactured by or specially for respondents.

PAR. 5. That it is the common belief and impression among dealers and consumers of automobile tires and the purchasing public generally that automobile tires having the appearance of and sold as new and unused tires are manufactured from new and unused material and in accordance with the methods and processes employed generally by manufacturers of standard automobile tires, and not by the process as employed and used by respondents as described and set forth in paragraph 3 of this complaint; that for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of automobile tires, the respondents circulated and caused to be circulated advertisements through various publications and through the mails to the trade, and among consumers generally, that respondents' automobile tires are new and have not been made over as set forth in paragraph 3, which advertisements have conveyed and do convey and are calculated and designed to convey the belief and impression that the said tires manufactured by the respondents are composed of new and unused material, and that the respondents have at all times herein mentioned concealed and wholly failed to disclose that the said tires so manufactured by respondents are in fact remade as described in paragraph 3.

PAR. 6. That for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, respondents advertised that such tires were guaranteed to give service of 4,000 miles, and that if

said tires failed to give such service respondents would furnish another tire for one-half the price quoted for such tires, thus representing and thereby creating the belief and impression among users of tires generally that said tires were calculated and expected by respondents to give service of 4,000 miles; that each of the respondents well knew that said tires had been worn and discarded before being coated with the thin film of rubber or composition, as aforesaid, and that said representations that said tires will run 4,000 miles are false, misleading, and calculated and designed to mislead and deceive purchasers and prospective purchasers.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., have been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondents having entered their appearance by Margaret M. Burnet, their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal

Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the Akron Tire Co., Inc., is a New York corporation with its principal place of business at Long Island City, in the State of New York, and that William H. Batcheller and George Batcheller own and control the majority of the capital stock in the said Akron Tire Co., Inc.; that the respondents are engaged in the business of purchasing discarded automobile tires, rebuilding same, and selling them in turn to automobile tire brokers in competition with other firms similarly engaged.

PAR. 2. That in the conduct of their business respondents purchase discarded automobile tires in various States of the United States and have same shipped to their factory at Long Island City, where the said tires are reconstructed and rebuilt and are then sold in turn to purchasers in various States of the United States.

PAR. 3. That the said tires sold and offered for sale by respondents are rebuilt and reconstructed tires, being built from partially used and discarded tires, and are constructed substantially as follows: The fabric to a great extent used in rebuilding the tires is what is known as Egyptian duck or sea island cotton taken from carefully selected partially worn standard make tires. The carcass of the tire is buffed, washed, and thoroughly cleaned. The fabric is reexamined, and worn parts are pulled out and subsequently replaced with fabric of the same quality as that originally used in the tires. It is then given several coats of high quality vulcanized cement and allowed to dry, and later a second coat is applied, after which a breaker strip is added and the tread stocks put on. To it is then added a final coat of sheet rubber and the tire is then cured in a large hydraulic mold, and the final touch is painting the tire on the inside with soapstone.

PAR. 4. That the automobile tires manufactured and sold by respondent as aforesaid have the appearance of being composed of new material and made in accordance with the

methods and processes employed generally by manufacturers of standard automobile tires, and that respondents prior to but not since January, 1917, circulated advertisements to the trade and among customers generally wherein it was not stated the said tires sold by respondents were rebuilt or reconstructed, and by such omissions the said advertisements as used had a tendency to create the impression among the purchasing public that respondent's tires were new and made in accordance with the methods employed generally by manufacturers of standard automobile tires. That since February, 1919, every tire rebuilt for the trade by the respondents have been marked with the word "Reconstructed," which word is cast in the pneumatic molds in which the remade tires are vulcanized, and which word, by the pressure of the process, is plainly and prominently indented in the refinished tires.

PAR. 5. That the aforesaid partially used and discarded automobile tires were of various makes and bore various trade-marks or brands, and that in the process of having said tires rebuilt the name of the maker of such tires and the original mark or brand was obliterated and in place there was stamped a new name or brand, depending upon the agency through which the said tires were offered for sale; that the restamping of the said tires with new names as aforesaid, without any qualifying words or explanation, tended to cause the purchasing public to believe the said tires were new tires, manufactured in accordance with the process employed generally by manufacturers of standard automobile tires.

PAR. 6. That a circular was distributed under the name of the Akron Tire Co., Inc., containing an advertisement representing substantially that if a tire failed to give service of 4,000 miles, such tire would be replaced at one-half the price paid; that some of the tires did give this service, and that those which did not were replaced for one-half the original purchase price, but that the advertisement tended to create the belief and impression among users of automobile tires that the said tires sold by respondents could be expected to give a service of 4,000 miles.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings, under the circumstances set forth, are 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, and the respondents, William H. Batcheller, George Batcheller, and Akron Tire Co., Inc., having entered their appearance by Margaret M. Burnet, their attorney, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the 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, their officers, agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Making representations by verbal statements, or statements in advertising matter, or otherwise, which are calcu-

lated and designed to create the belief and impression among consumers of automobile tires that rebuilt and reconstructed tires, restamped with new names and brands, are new tires manufactured from new and unused material.

(2) Selling or offering for sale rebuilt and reconstructed automobile tires, unless it is plainly and prominently indicated on the said tire that it is reconstructed or rebuilt.

(3) Wording and phrasing advertisements so as to create the impression and belief that automobile tires sold and offered for sale by respondents can reasonably be expected to give a service of 4,000 miles.

FEDERAL TRADE COMMISSION

v.

SINCLAIR REFINING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND SECTION 3 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 334.—October 14, 1919.

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, and also engaged in leasing pumps, tanks, and other equipment for the storage and handling of petroleum products in competition with manufacturers and sellers of such equipment, to its retail customers, of whom relatively very few required more than a single pump outfit in the conduct of their business;

Leased to such retailers pumps, tanks, and equipment at a nominal rental, not affording it a reasonable profit on its investment, upon the condition that they should use the same only for the purpose of storing and handling its products, a practice requiring a larger capital investment than many competitors possessed, having for its purpose the furtherance of the corporation's petroleum business, and resulting in loss of customers by competitors:

Held, (*a*) That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914;

(*b*) That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create for the corporation a monopoly in the business of selling petroleum products, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sinclair Refining Co., hereinafter referred to as the respondent, has been 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, 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 Sinclair Refining Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business located at the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline, and the leasing and loaning of oil pumps, storage tanks, or containers and their equipments in various States of the United States and the District of Columbia in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent in the conduct of its business as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil 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 inter-

state 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 competitors 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 and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the past four years.

PAR. 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 equipments 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.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sinclair Refining Co., hereinafter referred to as the respondent, has been using unfair methods of competition in in-

terstate commerce, in violation of the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," 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 Sinclair Refining Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business in the city of Chicago, in the State of Illinois; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline and the leasing of oil pumps and storage tanks and their equipments in various States of the United States and the District of Columbia, in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil 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 such products are sold, and such devices sold, 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 the various States of the United States; that there are numerous competitors of respondent who in the conduct of their businesses 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 such products are sold and the aforesaid devices sold, leased, or loaned by such competitors in competition with respondent to various persons, firms, corporations, and copartnerships; that in the conduct of such business, as aforesaid, respondent's competitors constantly move such products and devices from one State to another and there is conducted by said competitors of respondent a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the four years last past.

PAR. 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit and having submitted to the Commission, subject to its approval, an agreed statement of facts in said cause, which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence

to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the Commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the Commission having duly heard evidence on behalf of the Commission and respondent, and the respondent having filed a brief by its attorney, and the Commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the Commission and by the respondent, and being fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 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 Co.

PAR. 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 oil 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 competitors 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 businesses in a similar manner to that above described since January 25, 1917.

PAR. 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:

SINCLAIR REFINING COMPANY.

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 party of the second part for the sole purpose of storing and handling the gasoline supplied by 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 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 gasoline 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 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 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 thereof the parties hereto have caused this agreement to be executed the day and year first above written.

SINCLAIR REFINING COMPANY,

By _____

Party of First Part.

_____

Party of Second Part.

PAR. 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."

ORDER TO CEASE AND DESIST.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding and the respondent therein named having filed its answer herein, and the attorneys for the respective parties in said cause having stipulated to submit, and having submitted to the Commission, subject to its approval, an agreed statement of facts in said cause, which agreed statement was agreed should be taken in lieu of testimony as to those facts stipulated, and it having been agreed that as to other facts the evidence to be taken in a formal hearing was to become the evidence as to such other facts as were charged in the complaint herein or made a defense in the answer, and the Commission having duly appointed a time and place for the taking of testimony, and the respondent having appeared by counsel at the time and place so designated, and the Commission having duly heard evidence on behalf of the Commission and respondent, and the respondent having filed a brief by its

attorney, and the Commission having given due consideration to the complaint and answer herein and the stipulation as to the facts and the evidence submitted by the Commission and by the respondent and being fully advised in the premises reports and finds as follows: That having made its report and findings, as elsewhere set forth, and having concluded upon such report and findings that the respondent has been guilty of 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 respondent has violated 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," which report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, Sinclair Refining Co., shall 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.

Provided, however, That as to such pumps and tanks and equipments as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein respondent shall have four months from the date hereof to enter into new contracts or agreements with respect to the same which shall not be incompatible with the spirit and intent of this order.

It is also ordered, Under and by virtue of the authority conferred on the Commission by paragraph B of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, that the said Sinclair Refining Co., respondent, shall within 20 days after the expiration of the time allowed within which respondent shall have fully complied with the order to cease and desist, herein above set forth, report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business with respect to the subject matter involved in the order to cease and desist, and shall set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, which plan or plans are in use or are proposed to be put in use, and also attach to such report any contracts used by the respondents in the conduct of such business.

FEDERAL TRADE COMMISSION

v.

ROYAL EASY CHAIR CO.

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

Docket 239.—November 17, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of reclining chairs, gave and offered to give to employees of customers cash bonuses as an inducement to push the sale of its products with the purchasing public:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Royal Easy Chair Co., 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 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 Royal Easy Chair Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, having its principal office and place of business at the city of Sturgis, in said State, now and for more than one year last past engaged in manufacturing and selling reclining chairs and kindred products throughout the States and Territories of the United States and the District of Columbia, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce, in the manufacture and sale of reclining chairs and kindred products, the respondent, for more than one year last past has given and offered to give a cash bonus on each chair sold, to salesmen of retail merchants handling the products of the respondent and those of its competitors, as an inducement to push the sales of respondent's products, in preference to the products of its competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, the Royal Easy Chair Co., has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by Channing L. Sentz, its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument, therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Royal Easy Chair Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at the city of Sturgis, in said State; that the said respondent is now and for more than one year last past has been engaged in the manufacture and sale of reclining chairs among the several States of the United States, the Territories thereof,

and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the Royal Easy Chair Co., in the conduct of its business, manufactures such reclining chairs so sold by it in its factory located at the city of Sturgis, State of Michigan; that after said products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, and there is continuously and has been at all times a constant current of trade and commerce in the said reclining chairs between and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That in the course of its business of manufacturing and selling reclining chairs in interstate commerce, the respondent, the Royal Easy Chair Co., within the year last past has given and offered to give employees and salesmen of dealers who handle and sell the products of respondent and those of certain of its competitors cash bonuses as an inducement to push the sale of respondent's products.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts, under the circumstances therein set forth, are 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, and the respondent, the Royal Easy Chair Co., having entered its appearance by Channing L. Sentz, its attorney, duly authorized and empowered to act in the premises, and having filed its answer, and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of

facts as the evidence in this case, and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly giving or offering cash bonuses or prizes to employees or salesmen of dealers who handle and sell reclining chairs of the respondent and of one or more of the respondent's competitors, as an inducement to influence such employees to push the sale of the respondent's products.

FEDERAL TRADE COMMISSION

v.

BROWN PORTABLE CONVEYING MACHINERY CO.

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

Docket 235.—November 29, 1919.

SYLLABUS.

Where an agent of a corporation engaged in the manufacture and sale of portable conveying machinery, while attempting to make sales, represented to customers and prospective customers of the corporation's competitors, without such corporation's knowledge, that—

(*a*) the corporation would, or was about to, institute legal proceedings for infringement of its letters patent by portable conveying machinery manufactured and sold by a competitor;

(*b*) a suit at law was pending which had been instituted by the corporation against one of its competitors for infringement of a patent owned and controlled by the corporation;

(*c*) a certain competitor was misleading its (the corporation's) competitors and customers and prospective customers by falsely stating to them that a certain Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor; and that

(*d*) said Brown was not the inventor of the machinery sold by such competitor and was not in any way connected with the manufacture of any elevator, but that he had been employed by such competitor since the corporation's patent was obtained;

Whereas, in fact—

(*a*) said Brown was the inventor of a portable warehouse elevator upon which letters patent duly issued to him, and for some years had been an officer of a corporation engaged in the manufacture and sale of portable conveying machines; and

(*b*) the suit referred to had been dismissed some three years before and no appeal prayed for or taken from such decision, nor any further proceedings instituted for the alleged infringement of said patent either by the corporation or its predecessor:

Held, That such false and misleading statements, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Brown Portable Conveying Machinery Co., hereinafter referred to as the respondent, has been and is 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 thereto 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, Brown Portable Conveying Machinery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, now and for

several years last past engaged in the manufacture, sale, and shipment of portable conveying machinery throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries in trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Brown Portable Conveying Machinery Co., in the conduct of its business manufactures the portable conveying machinery so sold by it in its factory located in the State of Illinois and purchases and enters into contracts of purchase for the necessary component materials needed therefor in the different States of the United States and foreign countries, transporting the same through other States of the United States in and to its factory aforesaid, where they are made and manufactured into the finished product and sold and shipped to the purchasers thereof; that after such machinery is so manufactured it is continuously moved to, from, and among other States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said portable conveying machinery between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and especially to and through the city of Chicago, State of Illinois, and therefrom to and through other States of the United States, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Brown Portable Conveying Machinery Co., during the three years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of portable conveying machinery in commerce aforesaid, has threatened certain of its competitors and the customers of its competitors with suits for infringement of respondent's alleged letters patent; that such threats were not made in good faith, and when so made respondent had no intention of instituting any such suits, and in fact has not instituted any such suits, and that the same were calculated and designed to and did hinder, em-

barrass, and restrain competitors of respondent in the conduct of their business.

PAR. 4. That the respondent, Brown Portable Conveying Machinery Co., its agents, servants, and employees, within the three years last past with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of portable conveying machinery in commerce aforesaid has held out, stated, and represented to the customers of its competitors that—

1. There was a suit at law pending which had been instituted by the respondent against a certain competitor for infringement of a patent alleged to be owned and controlled by the respondent;

2. A certain competitor of the respondent was misleading its competitors and the customers and prospective customers of the respondent by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor;

3. The said Eugene Brown was not the inventor of the machinery sold by his company and was not in any way connected with the manufacture of any elevator, but that he had been picked up by the said competitor's company since respondent's alleged patent was obtained;

that such statements and representations were false and misleading and calculated and designed to and did hinder, embarrass, and restrain respondent's competitors and their customers and prospective customers in the conduct of their business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint, wherein it is alleged that the above-named respondent, Brown Portable Conveying Machinery Co., has been and is violating section 5 of the Federal Trade Commission act, and said respondent having thereafter appeared and filed its answer admitting certain of the matters and

things as therein alleged and set forth and denying others contained therein, and thereafter having made and entered into an agreed statement of facts with Claude R. Porter, chief counsel of the said Commission, wherein it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as the evidence in this case, and in lieu of testimony, and proceed forthwith upon the same to make and enter its report stating its findings as to the facts and its conclusions without the introduction of testimony or the presentation of argument, and the Commission having considered the same, and being duly advised in the premises, now makes and enters this, its report, stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Brown Portable Conveying Machinery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, now and for several years last past engaged in the manufacture, sale, and shipment of portable conveying machinery throughout the various States of the United States and foreign countries in trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Brown Portable Conveying Machinery Co., manufactures portable conveying machinery at its factory in Illinois out of materials it purchases in the different States of the United States and transports through other States of the United States in and to its factory in Illinois, and there makes and manufactures the same into finished product, and sells the machinery so manufactured to purchasers thereof; that after such machinery is so manufactured the same is continuously moved to, from, and among other States of the United States and foreign countries, and that there has been a constant current of trade and commerce in said machinery between and among the various States of the United States and foreign countries by respondent since July, 1912, and by its predecessor, the

Brown Portable Elevator Co. (an Oregon corporation) since 1907, and especially to and through Chicago, Ill., and therefrom to and from other States of the United States and foreign countries.

PAR. 3. That one Eugene Brown, of Colfax, State of Washington, is the inventor of a portable warehouse elevator, upon which the United States Patent Office on the 26th day of February, 1901, issued to him letters patent, the same being numbered 668971.

PAR. 4. That since the year 1912 the aforesaid Eugene Brown has been connected with, and is an officer of, the Colfax Manufacturing Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office, factory, and place of business located at the town of Colfax, in said State, engaged in the business of manufacturing and selling portable conveying machines.

PAR. 5. That in the year 1915 the Brown Portable Elevator Co., part of whose assets the respondent herein thereafter acquired, instituted a proceeding in equity in the United States District Court of the District of Oregon against Interior Warehouse Co. to enjoin the infringement of the aforesaid patent, No. 668971, and thereafter, to wit, on August 7, 1916, the court dismissed the said proceeding, from which decision the respondent, Brown Portable Elevator Co., has neither prayed for or perfected an appeal either in law or equity, and that neither said Brown Portable Elevator Co. nor the respondent herein has since said date instituted any proceeding against any person, firm, copartnership, or corporation for the alleged infringement of said patent.

PAR. 6. That one Mailler Searles was within the three years last past the representative on the Pacific coast of the respondent herein, and as such representative, while selling and offering to sell portable conveying machines of the Brown Portable Conveying Machinery Co., and while attempting to make such sales, circulated reports among customers and prospective customers of competitors of the respondent—

1. That the respondent herein would or was about to institute legal proceedings for the infringement of letters patent upon portable conveying machinery manufactured and sold by a competitor;

2. That there was a suit at law then pending which had been instituted by the respondent against a certain competitor for infringement of a patent alleged to be owned and controlled by the respondent;

3. That a certain competitor of the respondent was misleading its competitors and the customers and prospective customers of the respondent by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said competitor;

4. That said Eugene Brown was not the inventor of the machinery sold by his company and was not in any way connected with the manufacture of any elevator, but that he had been picked up by the said competitor's company since respondent's alleged patent was obtained;

but that all of such representations were made without the knowledge of the respondent herein.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraph 6, and each and all of them are, under the circumstances therein set forth, 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.

The Federal Trade Commission having issued and served its complaint herein. and the respondent, Brown Portable Conveying Machinery Co., having entered its appearance and filed its answer and thereafter made and entered into an agreed statement of facts with Claude R. Porter, chief

counsel for the Federal Trade Commission, wherein it was stipulated and agreed that the said Commission should take such agreed statement of facts as the evidence in this proceeding and in lieu of testimony and proceed forthwith upon the same and enter its report stating its findings as to the facts and its conclusion without the introduction of testimony or the presentation of argument, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Brown Portable Conveying Machinery Co., of Chicago, State of Illinois, its officers, agents, servants, representatives, and employees cease and desist from directly or indirectly making statements or circulating reports among its customers and prospective customers and the customers and prospective customers of its competitors:

(1) That the respondent, Brown Portable Conveying Machinery Co. has or is about to institute legal proceedings for the infringement of letters patent upon portable conveying machinery manufactured and sold by Colfax Manufacturing Co., of the town of Colfax, State of Washington.

(2) That there is a suit at law pending which has been instituted by the respondent, Brown Portable Conveying Machinery Co., against Colfax Manufacturing Co., of the town of Colfax, State of Washington, for the infringement of a patent alleged to be owned and controlled by the said respondent.

(3) That the Colfax Manufacturing Co., of the town of Colfax, State of Washington, is misleading its competitors and the customers and prospective customers of the respondent, Brown Portable Conveying Machinery Co., by falsely and erroneously stating to such customers and prospective customers that one Eugene Brown was the inventor of the portable elevator manufactured and sold by said Colfax Manufacturing Co.

(4) That Eugene Brown, an officer of the Colfax Manufacturing Co., of the town of Colfax, State of Washington, is not the inventor of the machinery sold by his company and is not in any way connected with the manufacture of any elevator, but that he has been picked up by the said Colfax Manufacturing Co. since respondent's, Brown Portable Conveying Machinery Co.'s alleged patent was obtained.

FEDERAL TRADE COMMISSION

v.

WESTERN SUGAR REFINERY ET AL.

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

Docket 254.—November 29, 1919.

SYLLABUS.

Where certain jobbers in groceries, for the purpose of preventing a competing corporation, in which a large number of retailers held stock, but which sold to the retail trade generally and only to such trade, and which had been purchasing from a large number of manufacturers at prices usually charged the jobbing trade, from purchasing from manufacturers and manufacturers' agents, secretly conspired among themselves—

(*a*) to represent, and did represent, to various manufacturers and to brokers representing such manufacturers, that said company should not be permitted to purchase from them at prices usually charged the jobbing trade; and to induce and compel manufacturers and their agents, by means of boycotts and threats of boycott, to decline to sell to said company upon the terms usually given to jobbers, and pursuant to said agreement;

(*b*) advised some of said brokers, and through them certain sugar refiners, their principals, that they objected to sales to said corporation on the usual jobbing terms;

(*c*) threatened various brokers, who secretly sold said corporation with boycott;

(*d*) refused, in the case of several of their number, to handle a certain product because the manufacturer thereof sold to the said corporation at the usual jobbing prices;

(*e*) sold and offered to sell to said company's retail customers products and commodities at prices lower than those charged by them to the company itself for similar products and commodities;

(*f*) made false statements concerning said corporation and its plan and manner of doing business; and

Where certain brokers, because of coercion, persuasion, boycott, and threats of boycott, and influenced by loss of patronage or fear of such loss—

(*a*) refused to sell to said corporation at the usual price to jobbers;

(*b*) advised manufacturers whom they represented not to sell to the corporation at such prices;

(*c*) refused to accept orders from said corporation except through other jobbers and at prices higher than those charged the jobbing trade;

(*d*) wrote (in the case of one of their number) to one of the principals, a sugar refiner, stating that all of the jobbers in the territory had expressed themselves as objecting to the said broker, or his principal, the refining company, selling to said corporation, with the result that the broker and refiner refused, and continued to refuse, to sell to said corporation; and (in the case of another broker) wrote to a manufacturer stating that the Southern California Association of Manufacturers' Representatives was opposed to its members soliciting business from said corporation, and that sales to the said corporation would affect the relations of the writer with other jobbers; and

(*e*) made false statements concerning the company and its manner of doing business; and

Where certain refiners of sugar, principals of some of the brokers herein referred to, with knowledge of the facts, conspired and agreed among themselves and with brokers and jobbers—

(*a*) to refuse to sell sugar to the said corporation at the usual prices to jobbers;

(*b*) actually refused, in the case of one of the principals, and continued to refuse, to sell to such corporation;

With the result that other brokers were influenced and persuaded not to sell to said corporation at the usual prices to jobbers, and that the corporation against which the above acts were directed was compelled to purchase a large percentage of the commodities usually handled by it from other jobbers, its competitors, paying therefor prices higher than those charged by manufacturers to jobbers, lost to its competitors a large volume of its business, suffered further loss by reason of its inability to secure sugar, and was prevented from purchasing freely in interstate commerce, the commodities dealt in by it at prices usually charged the jobbing trade:

Held, That such agreements and understandings, carried out in the manner described, constituted unfair methods of competition in violation of section 5 of the act approved September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Western Sugar Refining Co.; California-Hawaiian Sugar Refining Co.; Haas-Baruch & Co.; Stetson-Barret Co.; R. L. Craig & Co.; M. A. Newmark & Co.; United Wholesale Grocery Co.; Channel Commercial Co.; California Wholesale Grocery Co.; The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton; Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn; Holmes-Danforth-Creighton Co.; Johnson, Carvell & Murphy; Kelley-Clarke Co.; Laukota Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co., all of whom are 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 complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the Los Angeles Grocery Co. is a corporation organized and existing under the laws of the State of California, with principal place of business at Los Angeles, in said State, and is engaged in the business of buying and selling in wholesale quantities and in the usual course of wholesale trade groceries and food products such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer; that in the course of its said business the Los Angeles Grocery Co. purchases commodities dealt in by it in the various States and Territories of the United States and transports same through other States and Territories to the city of Los Angeles, in the State of California, where such commodities are resold in the usual course

of wholesale trade, and there is continuously, and has been at all times herein mentioned, a constant current of trade and commerce in commodities so purchased by the said Los Angeles Grocery Co. between and among the various States and Territories of the United States.

PAR. 2. That the respondents, the Western Sugar Refining Co., a corporation, and the California-Hawaiian Sugar Refining Co., a corporation, are each engaged in the State of California in the business of manufacturing cane sugar, which product is sold by said respondents in various States and Territories of the United States in the regular course of interstate commerce, but each of said respondents, with the purpose, intent, and effect of stifling and suppressing competition in the interstate sale of sugar in wholesale quantities, and pursuant to the demands of other respondents named herein, has failed and refused, and still refuses, to sell its manufactured product to said Los Angeles Grocery Co., whose organization and business is set out in paragraph 1 hereof.

PAR. 3. That the respondents, Haas-Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., are all corporations organized and existing under the laws of the State of California, with principal office and place of business at Los Angeles, in said State, and are engaged in the business known generally as that of wholesale grocers; that said respondents, with the purpose, intent, and effect of stifling and suppressing competition in the sale of grocery products at wholesale, have conspired and confederated together with themselves and with the other respondents named in paragraphs 2 and 4 hereof to prevent the Los Angeles Grocery Co. from obtaining commodities dealt in by it from manufacturers and manufacturers' agents and other usual sources from which a wholesale dealer in groceries must obtain the commodities dealt in by him and have by boycott and threats of boycott in many instances induced manufacturers of grocery products and agents of said manufacturers to refuse to sell their products to the said Los Angeles Grocery Co.;

that is to say, manufacturers were informed by said respondents that if they sold their product to said Los Angeles Grocery Co. that said respondents would not thereafter purchase any of the products of said manufacturers, but that a boycott of said products would be put in force by said respondents.

PAR. 4. That the respondents, The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton; Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn; Holmes-Danforth-Creighton Co.; Johnson, Carvell & Murphy; Kelley-Clarke Co.; Laukota-Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co. are members of the Southern California Association of Manufacturers' Representatives, and are engaged in business in Los Angeles, Calif., of selling the products of various manufacturers of groceries and food products, including the products manufactured by the respondents named in paragraph 2 hereof, which said manufacturers supply the wholesale grocery trade in southern California and adjacent territory; said respondents named in this paragraph have permitted the respondents named in paragraph 3 hereof to intimidate them by boycott and threats of boycott of the products sold by them, if same were also sold to the Los Angeles Grocery Co., and as a result of such intimidation said respondents have refused and still refuse to sell the products manufactured by their respective principals to said Los Angeles Grocery Co.; that the refusal to sell their respective products to the Los Angeles Grocery Co., as aforesaid, was with the purpose, intent, and effect of stifling and suppressing competition in the sale of grocery and food products at wholesale in that community.

REPORTS, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein in which it alleged that it had reason to believe that the above-named respondents, Western Sugar

Refinery; California & Hawaiian Sugar Refining Co.; Haas Baruch & Co.; Stetson-Barret Co.; R. L. Craig & Co.; M. A. Newmark & Co.; United Wholesale Grocery Co.; Channel Commercial Co.; California Wholesale Grocery Co.; The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton, Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn, Holmes-Danforth-Craighton Co.; Johnson, Carvell & Murphy; Kelley-Clarke Co.; Laukota-Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co., 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 by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearances by their respective attorneys, and having duly filed their answers, and the Commission having introduced testimony in support of the charges in the said complaint, and the respondents, Western Sugar Refinery, Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., California Wholesale Grocery Co.; The C. E. Cumberson Co., and J. H. Stewart Co., having rested their case at the close of the Commission's case, and the other respondents named herein having introduced certain evidence in support of their respective answers to said complaint, and counsel for Haas Baruch & Co.; Stetson-Barret Co.; R. L. Craig & Co.; M. A. Newmark & Co.; United Wholesale Grocery Co.; California Wholesale Grocery Co.; Channel ommercial Co.; Western Sugar Refinery; California & Hawaiian Sugar Refining Co.; and Mailliard & Schmiedell, having filed briefs, and the Commission having heard the argument of counsel on the merits of the case, and having duly considered the record and being fully advised in the premises, now makes this report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Haas Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel' Commercial Co., and California Wholesale Grocery Co., are all corporations organized and existing under the laws of the State of California, having their respective offices and places of business at Los Angeles, in said State, and are engaged in the business of buying and selling in interstate commerce in wholesale quantities, groceries, and products, such as are generally dealt in by those engaged in the business generally known as that of wholesale grocer. Said respondents are hereinafter designated as "respondent jobbers."

PAR. 2. That the respondents, The C. E. Cumberson Co.; The Colbert Co.; Flint & Boynton; Franz, Cunningham & Co.; Hamilton & Menderson; Henderson & Osborn; Holmes-Danforth-Creighton Co.; Johnson, Carvel & Murphy; Kelley-Clarke Co.; Laukota-Garriott Co.; D. A. Macneil & Son Co.; Mailliard & Schmiedell; Cosmo Morgan Co.; Parrott & Co.; Bradley-Kuhl Co.; Spohn-Cook Co.; J. H. Stewart Co.; The J. K. Armsby Co.; and Schiff Lang Co., are engaged in the business, at Los Angeles, Calif., of selling in interstate commerce, the products of various manufacturers of groceries and food products, including the products manufactured by the respondents, named in paragraph 3 hereof, which said manufacturers supply the wholesale grocery trade in southern California and adjacent territory; that all of said respondents are members of an association known as the "Southern California Association of Manufacturers' Representatives," and are hereinafter designated as "respondent brokers."

PAR. 3. That the respondents, Western Sugar Refinery and the California & Hawaiian Sugar Refining Co. are corporations incorporated under the laws of California, and are each engaged, in the State of California, in the business of manufacturing cane sugar, which product is sold by said respondents in various States and Territories of the United States in the regular course of interstate commerce. Said

respondents are hereinafter designated as the "respondent refiners."

PAR. 4. That the Los Angeles Grocery Co. is a corporation organized under the laws of the State of California and having its office, warehouse, and place of business in Los Angeles, in said State; that since January 2, 1918, the said Los Angeles Grocery Co. has been and still is engaged in the business of purchasing in wholesale quantities, goods and commodities, such as are generally carried by those engaged in business as a wholesale grocer, and selling the same in wholesale quantities for profit to its customers; that said company sells the goods and commodities dealt in by it to the retail grocery trade only, and does not sell to consumers; that there are about 80 stockholders of said company, most of whom are retail grocers; that said company sells to a large number of retail grocers who are not stockholders; that the business of the said Los Angeles Grocery Co. is separate and distinct from the business of any of its stockholders, and said company has never owned, controlled, or had an interest in any retail grocery or groceries, and has never conducted a retail business.

PAR. 5. That the said Los Angeles Grocery Co. and the respondent jobbers, namely, Haas-Baruch & Co., Statson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co. are competitors in the business of buying and selling in wholesale quantities, in the usual course of wholesale trade, groceries and food products, such as are bought and sold generally by persons, firms, and corporations engaged in the business generally known as that of a wholesale grocer.

PAR. 6. That the said Los Angeles Grocery Co., in the course of its said business, purchases the goods and commodities dealt in by it in the various States and Territories of the United States, and said goods and commodities are transported to the said Los Angeles Grocery Co., in the State of California, where such goods and commodities are resold in the course of wholesale trade, and there is continuously, and has been at all times mentioned in the complaint herein,

a constant current of trade and commerce in the goods and commodities so purchased by the Los Angeles Grocery Co. between the States and Territories of the United States.

PAR. 7. That a large number of manufacturers, other than those represented by the respondent brokers, have sold, and now sell directly to the Los Angeles Grocery Co. the goods and commodities respectively manufactured by them at the prices regularly charged to the competitors of said company, and others engaged in similar business.

PAR. 8. That since and prior to January 2, 1918, all of the respondents herein, with the purpose and intent of stifling, suppressing, and preventing competition in commerce between the Los Angeles Grocery Co. and the respondent jobbers, and with the purpose and intent of preventing the said Los Angeles Grocery Co. from obtaining the goods and commodities dealt in by it from manufacturers and manufacturers' agents and other usual sources from which a wholesale dealer in groceries must obtain such commodities, have secretly agreed and conspired among themselves, and have had secret understandings with each other as follows:

(*a*) The respondent jobbers have agreed among themselves that the said Los Angeles Grocery Co. was and is not conducting its business in accordance with certain tests or standards fixed and established by said respondent jobbers; and have agreed and conspired among themselves to state and represent to various manufacturers and their agents that the Los Angeles Grocery Co. was not conducting its business in accordance with such tests and standards; and have further agreed and conspired among themselves to induce, coerce, and compel, by means of boycott and threats of boycott, manufacturers of grocery and food products and their agents, to refuse to deal with or sell to the Los Angeles Grocery Co., in interstate commerce, upon the terms. and at the prices offered and charged to its competitors, including respondent jobbers and others engaged in similar business; and to compel said company to purchase its supplies from and through respondent jobbers, all of whom are competitors of said company.

(*b*) That the respondent brokers, induced by coercion, persuasion, boycott, and threats of boycott on the part of respondent jobbers, have agreed and conspired among themselves, and with the other respondents mentioned herein, to refuse to sell to the Los Angeles Grocery Co. the products manufactured by their respective principals upon the terms and at the prices offered and charged to the competitors of said company, including respondent jobbers and others engaged in similar business, to recommend to their respective principals that they should not sell to said company upon such terms and at such prices; and have further agreed and conspired to compel the Los Angeles Grocery Co. to purchase said products from and through respondent jobbers (who are competitors of said company) at prices higher than those charged to such competitors and others engaged in similar business.

(*c*) That the respondent refiners, namely, Western Sugar Refinery and California & Hawaiian Sugar Refining Co., and the respondents, Cosmo Morgan Co. and D. A. Macneil & Son Co., have agreed and conspired among themselves and with each other, and with the other respondents mentioned in the complaint, with the purpose and intent of stifling, suppressing, and preventing competition between the Los Angeles Grocery Co. and the respondent jobbers to refuse to sell sugar to the Los Angeles Grocery Co. upon the terms and at the prices offered and charged to its competitors, and to compel the Los Angeles Grocery Co. to pay for sugar purchased by it prices higher than those charged to its competitors and others engaged in similar business. That said respondents have had at all times knowledge of the opposition of the respondent jobbers to the Los Angeles Grocery Co.

PAR. 9. That pursuant to said agreements, understandings, and conspiracy, and to effect the objects and purposes thereof:

(*a*) The respondent jobbers at divers times since January 2, 1918, have stated and communicated to the

other respondents herein that the Los Angeles Grocery Co. was not conducting its business in accordance with tests or standards fixed and determined by the said respondent jobbers, and that said company should not be allowed to deal with and purchase from manufacturers of food products upon the terms and at the prices offered and charged to competitors of said company and others engaged in similar business.

(*b*) Said respondent jobbers have at divers times since January 2, 1918, communicated to the respondents, Cosmo Morgan Co. and D. A. Macneil & Son Co. objections to any sales by them of the products of their respective principals to the Los Angeles Grocery Co. upon the terms and at the prices offered and charged to competitors of said company and others engaged in similar business; and said respondents Cosmo Morgan Co. and D. A. Macneil & Son Co., have in turn communicated such objections to their respective principals, the respondents, Western Sugar Refinery and California & Hawaiian Sugar Refining Co.

(*c*) The respondent jobbers have since and prior to January 2, 1918, questioned various manufacturers' agents as to whether or not such agents were selling the products handled by them, respectively, to the Los Angeles Grocery Co. at the prices generally charged to competitors of said company and others engaged in similar business; and said respondent jobbers have threatened said manufacturers' agents with boycott and withdrawal of patronage in case they sold to the Los Angeles Grocery Co. upon such terms and at such prices.

(*d*) The respondent jobbers, at divers times since and prior to January 2, 1918, have threatened to boycott various manufacturers' agents because such agents had secretly sold to the Los Angeles Grocery Co. the products handled by them, respectively, at the prices charged competitors of said company; that in August, 1918, the respondents, Haas Baruch & Co., Stetson-Barret Co., and United Wholesale Grocery Co. refused to continue to handle a certain product when they learned that the

respondent broker selling such product had, under directions from his principal, sold some of the same to the Los Angeles Grocery Co. at the price charged to the competitors of said company.

(*e*) The respondent brokers have, since January 2, 1918, at the instigation of respondent jobbers, refused to sell to the Los Angeles Grocery Co. at the prices charged to its competitors; have refused to accept orders from said company unless such orders were billed to said company through one of the respondent jobbers, its competitors, at prices higher than those charged to such competitors and others engaged in similar business; and have at divers times recommended to their respective principals that the Los Angeles Grocery Co. should not be allowed to purchase directly from said principals upon the terms and at the prices offered and charged to its competitors and others engaged in similar business.

(*f*) The respondent brokers have since January 2, 1918, insisted that the Los Angeles Grocery Co. should purchase the commodities dealt in by them, respectively, through the respondent jobbers, who are competitors of the Los Angeles Grocery Co., and who rendered no service in connection with the distribution or handling of the commodities so sold to the Los Angeles Grocery Co., but merely rendered to the Los Angeles Grocery Co. bills for such commodities at prices higher than those charged to such respondents and others engaged in similar business.

(*g*) The respondent Cosmo Morgan Co. sent a letter to its principal, the Western Sugar Refinery, on January 7, 1918, in which among other things, it was stated that all of the wholesale grocers of southern California had been interviewed, and that they objected to the respondents, Western Sugar Refinery and Cosmo Morgan Co., selling to the Los Angeles Grocery Co.

(*h*) The respondents Western Sugar Refinery and Cosmo Morgan Co. have refused and still refuse to sell the product of said refiner to the Los Angeles Grocery Co.

(*i*) The respondent D. A. Macneil & Son Co. on July 2, 1918, sent to its principal, the respondent California & Hawaiian Sugar Refining Co., a telegram stating in substance that the jobbers of Los Angeles were about to hold a meeting to protest against recognition of the Los Angeles Grocery Co. as a jobber by the Food Administration.

(*j*) The respondent California & Hawaiian Sugar Refining Co., since January 2, 1918, has refused to sell its manufactured product to the Los Angeles Grocery Co. upon the terms and at the prices offered and charged to its competitors and others engaged in similar business, whereby said Los Angeles Grocery Co. has been compelled to buy said product through a broker at prices higher than those charged to its competitors.

(*k*) The respondent Schiff Lang Co., on February 20, 1919, wrote a letter to F. E. Booth & Co., manufacturers, of San Francisco, Calif., stating among other things that the Southern California Association of Manufacturers' Representatives were on record as against soliciting business from the Los Angeles Grocery Co., and that sales to said company would affect the relations of said F. E. Booth & Co. with the competitors of said company.

(*l*) The respondent jobbers, competitors of the Los Angeles Grocery Co., have at various times since and prior to January 2, 1918, sold and offered to sell to retail customers of the said company products and commodities at prices lower than those charged by said respondents to said company for similar products and commodities.

(*m*) The respondent jobbers and respondent brokers, at divers times since and before January 2, 1918, have made certain false statements and misrepresentations concerning the Los Angeles Grocery Co. and its plan and manner of conducting its business.

PAR. 10. That as a result of such agreement and conspiracy the Los Angeles Grocery Co. has been compelled since and prior to January 2, 1918, to purchase approxi-

mately 38 per cent of the products and commodities usually handled by it in the course of its business from its competitors, and to pay its competitors for such products and commodities prices higher than those regularly charged by manufacturers to its said competitors and others engaged in similar business.

PAR. 11. That as a result of such agreements and conspiracy the said Los Angeles Grocery Co. has lost to its competitors, the respondent jobbers, a large volume of business, and said Los Angeles Grocery Co. has suffered a further pecuniary loss by reason of its inability to obtain sugar from the respondents, Western Sugar Refinery and California & Hawaiian Sugar Refining Co.

PAR. 12. That the sale of sugar constitutes a large and important part of the business of a wholesale grocer or jobber. That as a result of such agreements and conspiracy and the refusal of the respondents, Western Sugar Refinery and California & Hawaiian Sugar Refining Co. to sell sugar to the Los Angeles Grocery Co., various manufacturers' representatives engaged in selling products and commodities in the course of interstate commerce to the wholesale grocery trade of southern California have been influenced and persuaded to refuse to sell the products and commodities handled by them respectively to the Los Angeles Grocery Co. at the prices regularly charged to its competitors and others engaged in similar business.

PAR. 13. That as a result of such agreements and conspiracy the Los Angeles Grovery Co. has been prevented from purchasing freely in interstate commerce the goods and commodities dealt in by it upon the terms and at the prices charged to its competitors; and said company has been compelled to purchase many of the commodities dealt in by it from and through its competitors and to pay to said competitors therefor higher prices than those paid by said competitors.

PAR. 14. That since January 2, 1918, the respondent brokers have at various times held secret, informal meetings directly after the adjournment of regular meetings of the Southern California Association of Manufacturers' Repre-

sentatives, at which said respondent brokers have discussed the Los Angeles Grocery Co. and have agreed among themselves what course to pursue relative to the demands of the said Los Angeles Grocery Co.; that it be permitted to purchase directly from their respective principals at the prices regularly charged to its competitors and others engaged in similar business; that such informal meetings were held so that no record might appear on the minutes of the said Southern California Association of Manufacturers' Representatives with respect to any action or discussion by said respondent brokers as members of such association.

PAR. 15. That the respondent brokers have been influenced in their decisions and actions with respect to the Los Angeles Grocery Co. and in their refusal to sell such company at the prices regularly charged to competitors thereof by the loss of patronage or the fear of loss of patronage from the respondent jobbers and because of the influence and pressure of said respondent jobbers.

PAR. 16. That at divers times since and prior to January 2, 1918, respondent brokers have secretly and without knowledge or consent of the respondent jobbers arranged with certain of their principals to pay to said Los Angeles Grocery Co. a rebate on the purchase price paid by said company for goods ordered by it from said respondent brokers and billed through and charged for by respondent jobbers; that said rebate generally amounted to the difference between the price paid by said Los Angeles Grocery Co. to respondent jobbers and the price charged for such goods to said respondent jobbers; that said rebates have been kept secret from respondent jobbers because of the fear and knowledge on the part of respondent brokers that said respondent jobbers would consider the allowance and payment of said rebates as tantamount to sales direct to said Los Angeles Grocery Co., and would, in consequence, withdraw their patronage from said respondent brokers and their respective principals. That in certain instances respondent brokers have secretly sold goods to said Los Angeles Grocery Co. when such brokers believed that the respondent jobbers would not learn of such sales.

CONCLUSIONS.

PARAGRAPH 1. That under the conditions and circumstances set out in the foregoing findings of fact the agreements, understandings, policies, and practices of the respondents, as described in the foregoing findings of fact, constitute a conspiracy or combination as alleged in the complaint herein.

PAR. 2. That under the conditions and circumstances set forth in the foregoing findings of fact, the agreements, understandings, and practices of the respondent jobbers, as described in said findings, constitute a conspiracy.

PAR. 3. That under the conditions and circumstances set forth in the foregoing findings of fact, the acts, agreements, understandings, and practices of respondent brokers constitute a conspiracy.

PAR. 4. That under the conditions and circumstances set forth in the foregoing findings of fact the acts, agreements, understandings, and practices of the respondent refiners constitute a conspiracy.

PAR. 5. That under the conditions and circumstances set forth in the foregoing findings of fact, the acts, agreements, understandings, and practices of the respondents constitute an interference with the right of the Los Angeles Grocery Co. and other persons, firms, and corporations to buy and sell commodities, in interstate commerce, wherever, from, and to whomsoever, and at whatsoever price such persons, firms, and corporations may agree upon among themselves.

PAR. 6. That under the conditions and circumstances set forth in the foregoing findings of fact, the acts, agreements, understandings, policies, and practices of the respondent jobbers, the respondent brokers, and respondent refiners, and each and all of them, constitute 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, and the respondents above

named having entered their appearances by their respective attorneys and having duly filed their answers admitting certain of the allegations of the complaint and denying others therein contained, and thereafter the Commission having introduced testimony in respect of the charges of the said complaint; and the respondents, Western Sugar Refinery, Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., California Wholesale Grocery Co., The C. E. Cumberson Co., and J. H. Stewart Co., having rested their case without introducing any evidence, and the other respondents named herein having introduced certain evidence in support of their respective answers to said complaint, and the Commission having heretofore made and filed its report stating its findings as to the facts and its conclusions that the 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,

PARAGRAPH 1. *It is ordered*, That the respondents, Western Sugar Refinery, California & Hawaiian Sugar Refining Co., Haas-Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., California Wholesale Grocery Co., The C. E. Cumberson Co., The Colbert Co., Flint & Boynton, Franz, Cunningham & Co., Hamilton & Menderson, Henderson & Osborn, Holmes-Danforth-Craighton Co., Johnson, Carvell & Murphy, Kelley-Clarke Co., Laukota-Garriott Co., D. A. Macneil & Son Co., Mailliard & Schmiedell, Cosmo Morgan Co., Parrott & Co., Bradley-Kuhl Co., Spohn-Cook Co., J. H. Stewart Co., The J. K. Armsby Co., and Schiff Lang Co., and each of them, and their officers and agents, forever cease and desist from directly or indirectly—

(1) Combining and conspiring among themselves to induce, coerce, or compel manufacturers or manufacturers' agents to refuse to sell to the Los Angeles Gro-

cery Co., or to refuse to sell to said company upon the terms and at the prices offered and charged to competitors of said company and others engaged in similar business.

(2) Continuing or establishing any tests or standards for determining or deciding whether the Los Angeles Grocery Co. shall be permitted to purchase its supplies in interstate commerce upon the same terms and at the same prices as its competitors and others engaged in similar business.

(3) Making verbal or written statements to manufacturers, manufacturers' agents, or others that the Los Angeles Grocery Co. does not conform to any test or standard established by respondents or any of them.

(4) Inducing, coercing or compelling, or conspiring or attempting to induce, coerce, or compel manufacturers or manufacturers' agents to refuse to sell to the Los Angeles Grocery Co. because of any plan of organization or method of transacting business adopted by said company.

(5) Carrying on between and among themselves, or with others, communications having the purpose, tendency, or effect of inducing, coercing, or compelling manufacturers and manufacturers' agents to refuse to deal with or sell to the Los Angeles Grocery Co. upon terms agreed upon between such manufacturers, or their agents, and said company.

(6) Combining or conspiring among themselves, or with others, or using any scheme or device whatsoever to hinder, obstruct, and prevent the Los Angeles Grocery Co. from freely purchasing and obtaining in interstate commerce the commodities and products usually handled by it in the course of its business, or from freely competing in interstate commerce with the respondents, Haas Baruch & Co., Stetson-Barret Co., M. A. Newmark & Co., R. L. Craig & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., or others engaged in similar business.

(7) Hindering, obstructing, or preventing any manufacturer or manufacturers' agent from selling and shipping in interstate commerce to the Los Angeles Grocery Co.

(8) Combining or conspiring together, or with others, or using any scheme or device whatsoever to hinder, obstruct, or prevent manufacturers or their agents from dealing with the Los Angeles Grocery Co. upon any terms agreed upon by such manufacturers or their agents and said company.

(9) Making or circulating any false or misleading statements or representations concerning said company, its plan of organization, or method of transacting its business.

(10) Combining or conspiring among themselves, or with others to compel, or attempt to compel, the Los Angeles Grocery Co. to purchase the commodities required for its business from or through any competitor of said company.

PAR. 2. *It is further ordered*, That the respondents, Haas Baruch & Co., Stetson-Barret Co., R. L. Craig & Co., M. A. Newmark & Co., United Wholesale Grocery Co., Channel Commercial Co., and California Wholesale Grocery Co., and their officers and agents forever cease and desist—

(1) Combining and conspiring among themselves, to boycott, or to threaten to boycott, or to threaten with loss of custom or patronage, any manufacturer engaged in interstate commerce, or the agent or representative of such manufacturer, for selling or agreeing to sell to the Los Angeles Grocery Co. at prices regularly charged competitors of said company or others engaged in similar business.

(2) Making any statements or representations, verbal or written, having the purpose, tendency, or effect of preventing the Los Angeles Grocery Co. from freely purchasing and obtaining in interstate commerce the products and commodities dealt in by it in the course of its business.

PAR. 3. It is further ordered that the respondents, The C. E. Cumberson Co., The Colbert Co., Flint & Boynton, Franz, Cunningham & Co., Hamilton & Menderson, Henderson & Osborn, Holmes-Danforth-Craighton Co., Johnson, Carvell & Murphy, Kelley-Clarke Co., Laukota-Garriott Co., D. A. Macneil & Son Co., Mailliard & Schmiedell, Cosmo Morgan Co., Parrott & Co., Bradley-Kuhl Co., Spohn-Cook Co., J. H. Stewart Co., The J. K. Armsby Co., and Schiff Lang Co., and their officers and agents, forever cease and desist:

(1) Combining and conspiring among themselves, or with the other respondents herein, or with other persons or parties, to hinder, obstruct, or prevent the Los Angeles Grocery Co. from freely purchasing and obtaining in interstate commerce the products and commodities dealt in by it in the course of its business, or to induce, coerce, or compel manufacturers, producers, or dealers engaged in interstate commerce to refuse to sell to the said Los Angeles Grocery Co.

(2) Making or communicating to their respective principals verbally or in writing any statements or recommendations the purpose, intent, or effect of which is to induce and persuade such principals to refuse to sell to the Los Angeles Grocery Co. upon the terms and prices offered to its competitors and others engaged in similar business.

PAR. 4. It is further ordered that the respondents, California & Hawaiian Sugar Refining Co. and Western Sugar Refinery, and their officers, agents, and representatives, forever cease and desist:

(1) Combining or conspiring among themselves and with the other respondents herein, or with any persons or parties, to hinder, obstruct, and prevent the Los Angeles Grocery Co. from freely competing in interstate commerce with other persons, parties, firms, and corporations engaged in such commerce by refusing to sell sugar to said company, or by refusing to sell sugar to said company upon the terms and at the prices offered to its competitors and others engaged in similar business.

(2) Using any device whatsoever to compel the Los Angeles Grocery Co. to pay for sugar purchased by it prices higher than those charged to competitors of said company and others engaged in similar business.

FEDERAL TRADE COMMISSION

v.

NESTLE'S FOOD CO., 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 274.—November 29, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of condensed milk in export trade in direct competition with other concerns similarly engaged, adopted and used upon its cans of condensed milk shipped into the Republic of Mexico, certain forms of labels upon which the only words indicating origin or place of manufacture were the following: "Henri Nestle, Vesey, Switzerland," with a tendency thereby to deceive and mislead the purchasing public into believing that the condensed milk so labeled was manufactured in Europe—although the corporation had no intention to deceive thereby—and to obtain for such condensed milk an undue preference in the Mexican market over competitors' milk known to be manufactured in the United States:

Held, That such labeling and sales, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Nestle's Food Co., Inc., hereinafter referred to as the respondent, has been and 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,"

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," 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 Nestle's Food Co., Inc., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located in the city of New York in said State, now and during the past year engaged in the business of manufacturing and selling condensed milk in export trade in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business manufactures such condensed milk so sold by it in its factories in the United States, where the same is put up in cans, packed in cases, and shipped to foreign countries for resale and consumption, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in the said condensed milk between the United States and foreign countries, particularly between the United States and the Republic of Mexico.

PAR. 3. That the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of condensed milk in export trade and of acquiring for its product an undue preference which might be given by the purchasing public in Mexico to condensed milk manufactured in Europe, has during the past year adopted and used and still continues to use upon its cans of condensed milk shipped from the United States into the Republic of Mexico for resale and consumption certain forms of labels which tend to deceive and mislead, and which in fact do deceive and mislead purchasers of said condensed milk in the Republic of Mexico into the belief that said condensed milk is manufactured in Europe, and which labels wholly conceal the fact that said condensed milk is manufactured in and shipped from the United States as aforesaid.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein in which it is alleged that it had reason to believe that the above-named respondent, Nestle's Food Co., Inc., has been and now 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," 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," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance and having filed its answer admitting certain allegations therein contained and denying others, and thereafter having made and executed an agreed statement of facts, which has been filed herein, and in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the evidence in this case in lieu of testimony, and shall forthwith thereupon make and enter its report, findings as to the facts and conclusion and its order disposing of this proceeding, respondent waiving and relinquishing any and all right to the introduction of other and further testimony, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and its conclusion as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Nestle's Food Co., Inc., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located in the city of New York, in said State, and is now, and during the past year has been, engaged in the business of manufacturing and selling condensed milk in export trade in direct competition

with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, manufactures such condensed milk, so sold by it, in its factories in the United States, where the same is put up in cans, packed in cases, and shipped to foreign countries for resale and consumption; and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said condensed milk between the United States and foreign countries, particularly between the United States and the Republic of Mexico.

PAR. 3. That the respondent, in the conduct of its business in export trade, as aforesaid, has, during the past year, adopted and used upon its cans of condensed milk shipped into the Republic of Mexico certain forms of labels upon which the only words indicating origin or place of manufacture are the following:

HENRI NESTLÉ

VESEY, SWITZERLAND

Wholesale Depot: 6 & 8 Eastcheap, London, E. C.

and that the use of such labels, notwithstanding the absence of any intention on the part of the respondent to deceive, nevertheless does tend to deceive and mislead the purchasing public into the belief that the condensed milk so labeled is manufactured in Europe, the effect whereof is to obtain for such condensed milk an undue preference, which might be given by the purchasing public in Mexico to condensed milk manufactured in Europe over that manufactured by respondent's competitors and known by the said purchasing public to be manufactured in the United States of America.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth is an unfair method 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," 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.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, having entered its appearance and filed its answer and thereafter having made, executed, and filed an agreed statement of facts, in which it was stipulated that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and should forthwith thereupon make and enter its report, findings as to the facts and conclusion, and its order disposing of this proceeding, and waiving therein any and all right to the introduction of other and further testimony, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," 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," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent cease and desist from using any labels upon or in connection with condensed milk manufactured by it in the United States and shipped into the Republic of Mexico for resale and consumption which may tend to deceive and mislead the public into the belief that the condensed milk so labeled is manufactured in Europe or elsewhere than in the United States of America, and from using the label described in paragraph 3 of the findings as to the facts hereto annexed, or any label essentially similar thereto upon said condensed milk without clearly and unmistakably indicating thereon that the said condensed milk was manufactured in the United States of America.

FEDERAL TRADE COMMISSION

v.

ORIENT MUSIC ROLL CO.

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

Docket 304.—November 29, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture of perforated paper music rolls for player pianos, purchased rolls manufactured and sold by competitors, from which it made and sold duplicates, thus avoided the greater part of the cost of the production of a musical number in the form of a perforated paper roll, namely, the cost of producing the original or "master" rolls of the different numbers published, from which master rolls duplicates in any quantity are readily manufactured; and thereby secured to itself an undue advantage over competitors by appropriating the results of their ingenuity, labor, and expense:

Held, That such acts of appropriation, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Orient Music Roll Co., hereinafter referred to as the respondent, has been and 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, Orient Music Roll Co., is a corporation organized and doing business under and by virtue of the laws of the State of Connecticut, having its principal office in the city of Bridgeport, in said State, and

is now and for more than one year last past has been engaged in the manufacture of perforated paper music rolls for use in the operation of player pianos and in selling and shipping such music rolls to persons and corporations in other States of the United States and in the District of Columbia, in direct competition with other individuals, copartnerships, and corporations similarly engaged, and that the business of manufacturing and selling such perforated paper music rolls constitutes an important and large branch of commerce among the several States of the United States.

PAR. 2. That the method employed generally in the manufacture of perforated paper music rolls involves the production first of an original or master roll for each musical selection published, from which any number of duplicates are readily manufactured and distributed through the trade to the public for use in player pianos; that the production of such master rolls requires great musical skill and ingenuity, involves the expenditure of much labor and money, and forms the greater part of the entire cost of the publication of a musical selection in the form of a perforated paper roll.

PAR. 3. That during a period of more than one year last past the respondent, in the conduct of its business of manufacturing and selling perforated-paper music rolls in interstate commerce, as aforesaid, has been and is now engaged in the practice of purchasing the music rolls manufactured and sold by competitors, making duplicates thereof, and selling such duplicate music rolls in competition with those manufactured by competitors by the method hereinbefore described; that the effect of said practice on the part of the respondent has been and is to secure for itself an undue advantage over competitors by appropriating the results of competitors' ingenuity, labor, and expense, thus avoiding the cost of producing the aforesaid master rolls and enabling it to sell such duplicate music rolls at lower prices than those which manufacturers of the original perforated-paper music rolls are obliged to charge.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed its answer herein, wherein the charges of the complaint are admitted to be true, and wherein it is said by the respondent that it is its intention to cease and desist the practices charged against it if the Federal Trade Commission orders it to discontinue said practices, and wherein it is said that it has already discontinued the practices charged in the complaint in so far as such complaint charges the respondent with purchasing competitors' music rolls and making duplicates from the same, and the Commission having considered the complaint and the answer filed thereto, and now being fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Orient Music Roll Co., is a corporation organized and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business in the city of Bridgeport, in said State, and is now and for more than one year last past has been engaged in the manufacture of perforated-paper music rolls for use in the operation of player pianos and in selling and shipping such music rolls from the city of manufacture in the State of Connecticut to various persons and corporations in other States of the United States and in the District of Columbia, in direct competition with other individuals, copartnerships, and corporations similarly engaged: that the business of manufacturing and selling such perforated-paper music rolls constitutes an important and large branch of commerce among the several States of the United States in the States in which respondent is engaged in its said business.

PAR. 2. That the method employed generally in the manufacture of perforated-paper music rolls involves the production first of an original or master roll for each musical selection published, from which any number of duplicates

are readily manufactured and distributed through the trade to the public for use in player pianos; that the production of such master rolls requires great musical skill and ingenuity, involves the expenditure of much labor and money, and forms the greater part of the entire cost of the publication of a musical selection in the form of a perforated-paper roll.

PAR. 3. That the respondent, Orient Music Roll Co., in April, 1918, purchased the equipment and business of the Orient Music Co., of Bristol, Conn.; that the said Orient Music Co., of Bristol, Conn., and the respondent, Orient Music Roll Co., in the conduct of their business of manufacturing and selling perforated-paper music rolls, in the course of commerce as aforesaid, purchased music rolls manufactured and sold by competitors and made duplicates and copies thereof and sold said duplicate and copied music rolls in competition with wholesalers and retailers of music rolls similar to those from which the said duplicates and copies were made; that the respondent company on May 1, 1919, ceased manufacturing music rolls in the manner above set forth and began making its own music rolls without duplicating or copying those of its competitors; that at present the respondent manufactures its own original music rolls and sells same to its customers; that the respondent also still sells its old reproductions or duplicates made from music rolls originally purchased from its competitors, as aforesaid, but that 90 per cent of the music rolls it now sells and ships in interstate commerce have been made originally by the respondent and were not duplicates or copies of rolls purchased which were the product of a competing manufacturer; that the effect of the practice on the part of the respondent in making said duplicated or copied rolls from the original rolls of competing manufacturers and the sale of the same in interstate commerce in competition with competing manufacturers or wholesalers or retailers of the products of competing manufacturers is to secure to the respondent an undue advantage over competitors by appropriating the results of competitors' ingenuity, labor, and expense, and thus avoiding the cost of producing the aforesaid master rolls.

CONCLUSION.

That the method of competition and the business practice set forth in the foregoing findings as to the facts is, under the circumstances set forth therein, an unfair method 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 respondent, Orient Music Roll Co., 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 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 filed its answer, signed by its treasurer, admitting that the matters and things alleged in the said complaint are substantially true and correct in the manner and form therein set forth, and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, the Orient Music Roll Co., shall cease and desist from manufacturing perforated paper music rolls by making duplicates or copies of rolls made by competing manufacturers in manner as more particularly set forth in the complaint herein, or any manner similar thereto, with a similar effect upon the business of competitors, and from offering for sale or selling in inter-

state commerce any perforated paper music rolls made by it or its predecessor, the Orient Music Co., by duplicating or copying music rolls made by a competing manufacturer or made in any similar manner with a similar effect.

FEDERAL TRADE COMMISSION

v.

CARTER PAINT CO.

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

Docket 236—December 30, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of roof and metal paints, waterproofing preparations, and similar products, gave and offered to give to employees of customers, premiums consisting of silverware, suits, hats, traveling cases, watches, clocks, talking machines, and other articles of value as inducement for them to push the sale of its goods with the purchasing public:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Carter Paint Co. hereinafter referred to as respondent, has been for more than a year last past, 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 Carter Paint Co., is a corporation, organized and existing and doing business

under and by virtue of the laws of the State of Indiana, having its principal office and place of business at the city of Liberty in said State, and is now and for more than one year last past has been engaged in manufacturing and selling roof and metal paints, waterproofing preparations, and similar products throughout the State and Territories of the United States, and the District of Columbia, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of roof and metal paints, waterproofing preparations, and similar products, the respondent, for more than one year last past has been giving and offering to give premiums consisting of silverware, suits, hats, traveling cases, watches, clocks, talking machines, and other personal property, to salesmen of jobbers handling the products of the respondent and those of its competitors, as an inducement to push the sales of respondent's products in preference to the products of its competitors.

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 Carter Paint Co., hereinafter referred to as the respondent, has been for more than one year last past, 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, 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 thereto would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by George W. Pigman and L. L. Bracken, its attorneys, and the respondent

having filed its answer admitting that certain matters and things alleged in said complaint are true in the manner and form therein set forth and denying others therein contained, and the Commission having offered testimony in support of its charges in said complaint and the respondent having offered testimony in its behalf, and the attorneys for the commission and the respondent having submitted their briefs as to the law and the facts, the Commission makes this report and findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Carter Paint Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal office and place of business at the town of Liberty, State of Indiana, and is now and for more than one year last past has been engaged in manufacturing and selling roof and metal paints, waterproofing preparations, and similar products throughout the States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling roof and metal paints, waterproofing preparations, and similar products in interstate commerce, the respondent, the Carter Paint Co., for more than a year last past has given and offered to give employees and salesmen of dealers who handle and sell the products of the respondent and those of certain of its competitors, premiums consisting of silverware, suits, hats, traveling cases, watches, clocks, talking machines, and other personal property, as an inducement for them to give attention to and push the sale of the respondent's products.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts, under the circumstances therein set forth are unfair methods of competition in interstate com-

merce, 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, the Carter Paint Co., having entered its appearance by George W. Pigman and L. L. Bracken, its attorneys, and having filed its answer admitting certain allegations of the complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having offered testimony in its behalf, and the attorneys for the commission and the respondent having submitted their briefs as to the law and the facts, and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, the Carter Paint Co., its officers, directors, agents, representatives, servants, and employees, cease and desist from directly or indirectly giving or offering to give premiums or prizes of any kind whatsoever to employees or salesmen of dealers who handle the products of the respondent and of one or more of the respondent's competitors, as an inducement to push the sale of the respondent's products.

FEDERAL TRADE COMMISSION

v.

THE UTAH BEDDING & MANUFACTURING CO.,

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

Docket 348.—December 30, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of mattresses, bedding, couches, and similar products gave and offered to give to employees of customers cash bonuses as an inducement to push the sale of its mattresses with the purchasing public:

Held, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Utah Bedding & Manufacturing Co., 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 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, Utah Bedding & Manufacturing Co., 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 at the city of Salt Lake, in said State, now and for more than one year last past engaged in manufacturing and selling mattresses, beds, couches, and similar products throughout the States and Territories of the United States and the District of Columbia, and that at all times hereinafter men-

tioned the respondent has carried on and conducted such business in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the sale of mattresses, beds, couches, and kindred products in interstate commerce, has given and offered to give a cash premium or bonus on the sale of certain mattresses to the salesmen of merchants handling the products of the respondent and those of its competitors as an inducement to influence them to push the sales of respondent's products, to the exclusion of the products of its competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, the Utah Bedding & Manufacturing Co., has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Utah Bedding & Manufacturing Co., 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 said State, and is now and for more than one year last past has been engaged in manufacturing and selling mattresses, bedding, couches, and similar products in interstate commerce, in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, the Utah Bedding & Manufacturing Co., in the course of its business of manufacturing and selling mattresses, bedding, couches, and similar products in interstate commerce, has within the last three years sold and offered to sell a patented mattress known as the "San O tuf" mattress to merchants in the towns and cities of Utah, Colorado, Idaho, and Wyoming, in or near its selling territory surrounding the city of Salt Lake, and in order to stimulate the sale of such mattresses the respondent has given and offered to give to employees and salesmen of dealers who handle and sell the "San O tuf" mattress and mattresses of certain of its competitors cash bonuses.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are 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, and the respondent, the Utah Bedding & Manufacturing Co., having filed its answer and thereafter having made, executed, and filed an agreed statement of

facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly giving or offering to give cash bonuses or prizes to employees or salesmen of merchants who handle and sell mattresses, bedding, couches, and similar products of the respondent and of one or more of the respondent's competitors, as an inducement to influence such employees or salesmen to stimulate or push the sale of the respondent's products.

FEDERAL TRADE COMMISSION

v.

J. B. COHEN, TRADING UNDER THE NAME AND STYLE OF THE COLE-CONRAD CO.

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

Docket 349.—December 30, 1919.

SYLLABUS.

Where an individual engaged in the sale of groceries by mail in "combination orders" only, the price of which did not include cost of transportation to the residence of the purchaser, and in which

orders the number of items and the quantity of each, but not always the quality and kind, were specified with certainty—

(*a*) advertised different "combination orders" so assembled that each contained one or more staple articles of well-known quality and price, and other articles, constituting the greater part of the order, the quality and retail prices of which were not well known to the general public, and set forth prices alleged to be charged for each item, which prices for the well-known and staple articles were less than the cost thereof, but for the less familiar articles were at such increased amounts as to afford a satisfactory profit on the sale as a whole; thereby misleading the purchasing public into believing that each and every item of groceries was sold at a certain definite price and that the less well-known articles were sold at proportionately as low prices as the staple and well-known articles were represented to be sold;

(*b*) overstated the price that would be charged by his competitors for similar "combination orders" and for the less familiar articles making up said orders;

(*c*) advertised that he was selling his "combination orders" and each item thereof at prices considerably less than those charged by his competitors, when in fact such orders and some individual items thereof could have been purchased from his competitors at prices considerably less than those charged by him, including the cost of transportation to the residence of the purchaser:

Held, That such false and misleading advertising constituted, under the circumstances set forth, unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that J. B. Cohen, trading under the name and style of the Cole-Conrad Co., hereinafter referred to as the respondent, has been and 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, J. B. Cohen, is a resident of the State of Illinois, having an office for the transac-

tion of business in the city of Chicago, in said State, and is now and for more than a year last past has been engaged under the trade name and style of the Cole-Conrad Co. in the sale of groceries by mail throughout the several States of the United States and the District of Columbia in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That during the year last past, in the conduct of his business in the sale of groceries in interstate commerce as aforesaid, the respondent has adopted the practice of selling its groceries in combination orders consisting of one or more well-known and staple articles combined with others not so well known or familiar to the purchasing public, such combination orders being sold at a fixed aggregate price; that said combination orders are extensively advertised by the respondent in newspapers, magazines, and catalogues, which advertisements set forth the different items of the said combination orders, together with the individual prices of said items, which for the well-known and staple articles are less than cost, but for the less familiar articles are at such increased prices as give the respondent a satisfactory profit upon the aggregate items of the said combination orders, and that the effect of said form of advertisement in connection with other false and misleading statements contained in said advertisements is to deceive and mislead the public into the belief that the other items of groceries composing respondent's said combination orders are sold at the same proportionately low prices as the staple and well-known groceries, and that groceries in general are sold by the respondent at prices very much less than those charged by competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, J. B. Cohen, trading under the name and style of the Cole-Conrad Co., had been and then was 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 that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect; and the respondent having filed his answer to said complaint, and the issues so raised having, pursuant to due notice given to said respondent, come on for hearing before the Commission; and the Commission having appeared and introduced its evidence in support of its charges, and the respondent having failed to appear; and all testimony heard at said hearing having been reduced to writing and, together with the evidence introduced thereat, having been filed in the office of the Commission, the Commission being fully advised in the premises and upon consideration thereof, now makes this its report and findings as to the facts and its conclusions thereon:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, J. B. Cohen, is now and since March 1, 1919, has been continuously engaged in the business of selling in "combination orders" groceries by "mail order" in the manner hereinafter more particularly described as a sole trader under the name of the Cole-Conrad Co., with offices in Chicago, Ill., at which he transacts said business. For a short period of time since March 1, 1919, respondent also conducted such business under the names of the Bayard Grocery Co. and the Kellogg Grocery Co. Respondent was also engaged in the same business during the year 1917, but was ordered by the United States Food Administrator to discontinue it. This order was rescinded on March 1, 1919.

Respondent carries on his business by soliciting the general public and securing from it purchasers for his groceries by means and as the result of representations contained in advertisements which he causes to be published in catalogues and in numerous newspapers, magazines, and other periodicals which are circulated and read throughout the States and Territories of the United States and the District of

Columbia. Between March 1, 1919, and April 28, 1919, respondent, as a result of this method of solicitation, secured approximately 15,000 "combination orders" for groceries from purchasers located throughout the United States. Respondent filled these orders and caused the groceries therein described to be transported to the respective States wherein such purchasers resided, receiving therefor an aggregate amount of $50,000 or $60,000. Respondent is still engaged in filling orders received as a result of the advertisements mentioned above and shipping the groceries therein described in the manner stated. A portion of the advertising above referred to is still being circulated by respondent. In thus carrying on his business, and in thus selling groceries to the general public, respondent is in direct competition with numerous persons, firms, and corporations who are also engaged in selling groceries to the general public by mail order and otherwise.

PAR. 2. Respondent advertises and sells his groceries only in "combination orders." These orders consist of a combination of anywhere from 3 to 14 different items of groceries. The number of items and the quantity of each is specified with certainty in each order, but the quality and kind is not always described with certainty. Respondent advertises 33 different "combination orders" for which he charges prices ranging from $1.99 up to $259.16. Each order is so made up with reference to the nature of the items of groceries included therein that it will contain one or more staple articles, the quality and retail price of which are more or less well known to the general public and other articles constituting the greater part of the "combination orders," the quality and retail price of which are not so well known. That in said advertisements published by the respondent as aforesaid the various items of the different "combination orders" are set forth, together with the prices alleged to be charged for each item; that the prices set forth for the well-known and staple articles are less than the cost thereof, but the prices set forth for the less familiar articles are at such increased amounts as to enable the respondent to make

a satisfactory profit on the sale; and that such advertisements have the capacity to and do mislead the purchasing public into the belief that each and every item of groceries is sold at a certain definite price, and that the less familiar articles are sold by the respondent at proportionately as low prices as the staple and well-known articles are represented to be sold, whereas, in truth and in fact, respondent does not sell any separate article of the groceries so advertised by him at a definite price, but sells only the said complete "combination order" at such a definite price for the whole thereof as will allow him a satisfactory profit on the sale and will not sell separately any article mentioned in any of his orders or in any part of his advertisements.

PAR. 3. Respondent in said advertisements has been representing that the prices of his "combination orders" and of the items of the less familiar articles of groceries, enumerated therein, are less than the prices at which similar articles or combinations of articles of groceries are sold by competitors, whereas in truth and in fact such articles and combinations of articles of groceries could have been purchased from the respondent's competitors at prices considerably less than those represented by him as being charged by his said competitors.

PAR. 4. Respondent in said advertisements has been representing that he is selling his "combination orders," and each item thereof, at prices considerably less than those charged by his competitors, when in fact and in truth such orders and individual items of groceries could have been purchased from respondent's competitors at prices considerably less than those charged by respondent, including the cost of transportation to the residence of the purchaser thereof, whereas purchasers of respondent's groceries are compelled to defray the cost of such transportation.

CONCLUSIONS.

The acts and conduct of the respondent set forth in the foregoing findings as to the facts are unfair methods of competition in commerce within the meaning and 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.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, J. B. Cohen, trading under the name and style of the Cole-Conrad Co., had been and then was 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 that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondent having filed his answer to said complaint, and the issues so raised having pursuant to due notice given to said respondent come on for hearing before the Commission; and the Commission having appeared and introduced its evidence in support of its charges and the respondent having failed to appear; and all testimony heard at said hearing having been reduced to writing and, together with the evidence introduced thereat, having been filed in the office of the Commission, and the Commission being fully advised in the premises and upon consideration thereof having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, J. B. Cohen, trading under the name and style of the Cole-Conrad Co., with offices at Chicago, Ill., cease and desist from selling or offering to sell groceries or any other article of merchandise or commodity of whatsoever kind, character, or description in commerce among the several States or in any Territory of the

United States or the District of Columbia by means of advertisements for combination orders of groceries in which the individual items are set forth, together with the prices thereof, which for the well-known and staple groceries are at or less than cost, but for the less familiar articles are at such increased amounts as render a satisfactory profit upon the aggregate items of such combination orders, or by means of any other false, misleading, deceptive, or unfair statements or representations in magazines, newspapers, periodicals, or catalogues, or made or put forth in any other manner howsoever, where such statements or representations have a tendency or capacity to discredit competitors or their method of doing business, or are calculated or designed to mislead or deceive respondent's customers or prospective customers, or the customers or prospective customers of competitors or the public generally, as to the true character of the transaction, or to create a false impression to the effect that respondent is selling his groceries or other commodities or any individual item of either thereof at prices as low as or lower than those charged by competitors.

FEDERAL TRADE COMMISSION

v.

PLOMO SPECIALTY MANUFACTURING CO. AND RIVERSIDE REFINING CO.

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

Docket 448.—December 30, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of oils, turpentine, and kindred products—

(*a*) represented by means of advertisements and brands that a product sold by it, composed of turpentine adulterated with mineral oil, was "second-run" turpentine, the fact being that there is no product commercially known as "second-run" turpentine;

(*b*) represented by means of advertisements and brands that a product sold by it and composed of linseed oil, adulterated with mineral oil, was "second-run" linseed oil, the fact being that there is no such product as "second-run" linseed oil;

With the result of misleading purchasers into believing that the turpentine and linseed oil sold by it were pure products, notwithstanding the fact that it stated in its advertisements that said products were not pure, nor recommended for medicinal purposes:

Held, That such advertising, and such branding, under the circumstances set forth, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Plomo Specialty Manufacturing Co. and Riverside Refining 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 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, Plomo Specialty Manufacturing Co., is a corporation doing business under the laws of the State of Ohio, with its principal office and place of business located at the city of Cleveland, in said State; that the respondent, Riverside Refining Co., is a subsidiary of the said Plomo Specialty Manufacturing Co. and was organized and exists for the sole purpose of marketing and selling the oil, turpentine, and kindred products of the Plomo Specialty Manufacturing Co.; that the said respondents are now and at all times hereinafter mentioned have been engaged in the business of manufacturing, purchasing, selling, and reselling certain oils and turpentine and kindred products in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondents purchase the component ingredients used in the

manufacture of said oils, turpentine, and kindred products in various States and Territories of the United States and transport the same through other States and Territories in and to the city of Cleveland, State of Ohio, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States of the United States, the Territories thereof, and the District of Columbia; and there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia to and through the City of Cleveland, State of Ohio, and from there to and through other States of the United States, Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents for more than a year last past, in the sale of their products as aforesaid in interstate commerce, have sold and are now selling and offering for sale certain of their products which are and have been adulterated and mixed with a low grade mineral oil and other ingredients, and have represented by means of advertisements and circulars and held out and stated to the purchasing public that the product so offered for sale was "second run" turpentine; that such statements and representations are false and misleading and calculated and designed to and do deceive the trade and the general public into believing respondents' products to be pure and unadulterated.

PAR. 4. That the respondents for more than a year last past, in the sale of oils, turpentine, and kindred products in interstate commerce, have sold and are now selling and offering for sale a so-called "second run" linseed oil, that in the trade there is no such commodity known as "second run" linseed oil, and that the oil sold by respondents as "second run" linseed oil is a mixture of low grade mineral

oils with pure linseed oil; that the representation and statement by respondent in its advertising matter that its linseed oil is "second run" is false and misleading and calculated and designed to and does deceive the trade and the general public into believing respondents' products to be pure and unadulterated.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondents, Plomo Specialty Manufacturing Co. and Riverside Refining Co., have been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondents having entered their appearance by their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and from therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Plomo Specialty Manufacturing Co., is an Ohio corporation, with its principal place of business in the city of Cleveland, in said State, and the Riverside Refining Co. is a corporate trade name adopted by the Plomo Specialty Manufacturing Co. as a medium for marketing oils, greases, and paints, and exists for the sole purpose of marketing and selling products of the Plomo Specialty Manufacturing Co.; that the said Plomo Specialty Manufacturing Co. is now and at all times hereinafter mentioned has been engaged in the business of manufacturing, purchasing, selling, and reselling certain oils, turpentine, and kindred products in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the said respondent has through its own name and through its corporate trade name, Riverside Refining Co., purchased the component ingredients used in the manufacture of said oils and turpentine in various States of the United States and transported the same through other States to the city of Cleveland, State of Ohio, where they were manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States, and there is continuously and has been at all times herein mentioned a constant current of trade in commerce of said products between and among the various States of the United States, the District of Columbia, and foreign countries.

PAR. 3. That respondent, through its selling medium, Riverside Refining Co., for more than a year last past in the sale of its products as aforesaid in interstate commerce, has represented by means of advertisements and brands, placed on containers, to the purchasing public that turpentine and linseed oil sold by it are "second run." That linseed oil is pressed from the flaxseed. That there is no such product as "second run" linseed oil. That the product called "second run" linseed oil by respondent is linseed oil adul-

terated with mineral oil. That respondent's so-called "second run" is composed of 45 per cent linseed oil, 10 per cent turpentine, and 45 per cent mineral oil. That the use of the term "second run" misleads the purchasing public into believing that linseed oil sold and advertised as "second run" is a pure product.

PAR. 4. That the respondent, through its selling medium, Riverside Refining Co., for more than a year last past represented by means of advertisements and brands to the purchasing public that the turpentine sold by it was "second run." That there is no such product commercially known as "second run" turpentine. That respondent's so-called "second run" turpentine is composed of 30 to 40 per cent turpentine and 60 to 70 per cent low-grade mineral oil. That the use of the term "second run" as applied to turpentine misleads the purchasing public into believing turpentine sold and advertised as "second run" is a pure product. And, further, the application of the term "second run" to a mixture which contains turpentine implies a product which has been obtained by a second running of pine trees from which commercial turpentine has previously been taken.

PAR. 5. That respondent, through its selling medium, Riverside Refining Co., has stated in its advertising matter that its so-called "second run" linseed oil and "second run" turpentine are not pure products and are not recommended for medicinal purposes, and respondent's salesmen are expressly instructed to so advise purchasers.

CONCLUSION.

That the method of competition set forth in the foregoing findings, under the circumstances is an unfair method 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, and the respondent, Plomo Specialty Manufacturing Co. and Riverside Refining Co., having entered its appearance by Tolles, Hogsett, Ginn & Morley, its attorneys, duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, its agents, representatives, servants, employees, and its selling medium, Riverside Refining Co., cease and desist from directly or indirectly holding out and representing by means of advertisements and brands, that a mixture of turpentine and low grade mineral oil is "second run" turpentine, that a mixture of linseed oil and low grade mineral oil is "second run" linseed oil, or using or applying the term "second run" in any way whatsoever to adulterated turpentine and linseed oil which may tend to lead the purchasing public to believe such adulterated products to which the term "second run" is applied are pure and unadulterated.

FEDERAL TRADE COMMISSION

v.

WINSTED HOSIERY CO.

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

Docket No. 214.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Men's natural merino," "Men's gray wool shirts," "Men's natural-wool shirts," "Men's natural-worsted shirts," and "Men's Australian wool shirts," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Winsted Hosiery Co., hereinafter referred to as the respondent, has been and is 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, 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, Winsted Hosiery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, having its principal factory, office, and place of business located at the town of Winsted, in said State, now and for more than one year last past engaged in manufacturing

and selling underwear throughout the States and Territories of the United States, and that at all times hereinafter mentioned respondent has carried on and conducted such business in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Winsted Hosiery Co., in the conduct of its business, manufactures such underwear so sold by it in its factory located at the town of Winsted, State of Connecticut, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, transporting the same through other States of the United States in and to said town of Winsted, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the town of Winsted, State of Connecticut, and therefrom to and through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That for more than one year last past the respondent, Winsted Hosiery Co., with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business manufactured and sold in commerce aforesaid and labeled, advertised, and branded certain lines of underwear composed of but a small amount of wool as "Men's natural merino shirts," "Men's gray wool shirts," "Men's natural wool shirts," "Men's natural worsted shirts," "Australian wool shirts." That such advertisements, brands, and labels are false and misleading and calculated and designed to, and do, deceive the trade and general public into the belief that such underwear is manufactured and made and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Winsted Hosiery Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Winsted Hosiery Co., is a Connecticut corporation, with its principal place of business located at the town of Winsted, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Winsted Hosiery Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Men's natural merino," "Men's gray wool shirts," "Men's natural wool shirts," "Men's natural worsted shirts," "Men's Australian wool shirts."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "natural merino," "wool," "natural wool," "natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings, the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Winsted Hosiery Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Winsted Hosiery Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the labels and brands "wool," "merino," and "worsted," or any similar descriptive brands or labels, on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely

of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool-and-cotton; worsted-and-cotton; wool worsted-merino and cotton; worsted, cotton and artificial silk).

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

FEDERAL TRADE COMMISSION

v.

THE H. E. BRADFORD CO., INC.

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

Docket 346.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Men's merino shirts," "Men's natural wool union suits," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The H. E. Bradford Co., Inc., hereinafter referred to as the respondent, has been and 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, The H. E. Bradford Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Vermont, having its principal office and place of business in the city of Bennington, in said State, now and for more than two years last past engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business manufactures such underwear so sold by it at its factory in the city of Bennington, State of Vermont, and purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Bennington, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moving to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Bennington, State of Vermont, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool, as "Men's merino shirts," "Men's natural wool union suits."

That such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, The H. E. Bradford Co., Inc., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The H. E. Bradford Co., Inc., is a Vermont corporation, with its principal

place of business located in the city of Bennington, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, The H. E. Bradford Co., Inc., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent, in the sale and shipment of its products in interstate commerce, as hereinbefore described, has labeled, advertised, and branded certain lines of underwear as follows: "Men's merino shirts," "Men's natural wool union suits."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the under-

wear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, The H. E. Bradford Co., Inc., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts, in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, The H. E. Bradford Co., Inc., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly em-

ploying or using the labels and brands "Merino" and "Natural wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., Wool and cotton; Worsted and cotton; Wool worsted merino and cotton; Worsted, cotton, and artificial silk).

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

FEDERAL TRADE COMMISSION

v.

E. I. FIRKS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF THE SPONGEABLE LINEN COLLAR CO.

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

Docket 354.—January 29, 1920.

SYLLABUS.

Where an individual engaged in the sale of collars composed chiefly of celluloid, but with a center layer of cotton fiber, adopted and used the trade-mark "Spongeable linen" to describe said collars, and advertised, held out, and sold the same as "Spongeable linen": *Held*, That such labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that E. I. Firks, doing business under the firm name and style of the Spongeable Linen Collar Co., hereinafter referred to as the respondent, has been and is using unfair methods of competi-

tion 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, E. I. Firks, doing business under the firm name and style of The Spongeable Linen Collar Co., has his principal office and place of business in the city of Cincinnati, State of Ohio, and is now and for more than four years last past has been engaged in the sale of collars in and among the several States of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the collars sold by the respondent are composed principally of celluloid, having a center layer of cotton fabric between two outer layers of celluloid, and are manufactured for the respondent in the State of New York, whence the respondent causes them to be transported to his place of business in the city of Cincinnati, in the State of Ohio, where they are sold and shipped to dealers in different States of the United States and the District of Columbia for resale to the public; and that there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said collars between and among the various States of the United States and the District of Columbia.

PAR. 3. That in connection with the sale of such collars as aforesaid respondent for more than four years last past has adopted and used the trade-mark "Spongeable linen" to describe said collars, and has advertised, held out, and sold his product as such for the purpose of securing for his collars an undue preference over the collars manufactured by competitors, and with the effect of deceiving and misleading the public and causing them to believe that respondent's collars are composed of linen.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, E. I. Firks, doing business under the firm name and style of The Spongeable Linen Collar Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered his appearance by his attorney, duly authorized and empowered to act in the premises, and having filed his answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case, and in lieu of testimony, and shall forthwith thereupon make its report, stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, E. I. Firks, does business under the firm name and style of the Spongeable Linen Collar Co. and has his principal office and place of business in the city of Cincinnati, State of Ohio, and is now and for more than four years has engaged in the sale of collars in and among the several States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the collars sold by the respondent are composed chiefly of celluloid, having a center layer of cotton fabric between two outer layers of celluloid, and are manufactured for the respondent in the State of New York, whence the respondent causes them to be transported to his place of business in Cincinnati, State of Ohio, from where they are sold and shipped to dealers in different States of the United States for resale to the public; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said collars between and among the various States of the United States.

PAR. 3. That in the sale of said collars respondent for more than four years last past has adopted and used the trade-mark "Spongeable linen" to describe said collars and has advertised, held out, and sold the said collars as such; that the trade-mark "Spongeable linen" used to describe and advertise the said collars deceives and misleads the purchasing public into believing that respondent's collars are composed of linen.

CONCLUSION.

That the method of competition set forth in the foregoing findings, under the circumstances, is an unfair method 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, and the respondent, E. I. Firks, doing business under the firm name and style of the Spongeable Linen Collar Co., having entered his appearance by Francis B. James, his attorney, duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts in which he stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter

its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, his agents, representatives, servants, and employees cease and desist from directly or indirectly applying or using in any manner whatsoever the word "Linen" to collars composed chiefly of celluloid; and further, from advertising or representing in any manner whatsoever to the purchasing public that collars manufactured chiefly from celluloid are composed of "Linen."

It is further ordered, That the respondent make and file with the Commission not later than the 29th day of May, A. D. 1920, a report in detail of the manner and form in which this order has been conformed to.

FEDERAL TRADE COMMISSION

v.

SOPHIE COHN, SAMUEL M. CHAZANOFF, AND B. COUNSELBAUM, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF THE GOOD WEAR TIRE & TUBE CO.

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

Docket 403.—January 29, 1920.

SYLLABUS.

Where a partnership engaged in the business of cementing and sewing together used and second-hand tires—

(*a*) advertised the same extensively as "Double tread" tires, and sold them to the public throughout the United States without

clearly indicating that said tires were made of second-hand and unserviceable tires; and

(*b*) adopted the name Good Wear Tire & Tube Co. as a trade name, with full knowledge of the fact that the Goodyear Tire & Rubber Co. was then, and had been for a number of years, engaged in the business of manufacturing and selling new automobile tires and tubes, and had, by means of extensive advertising, familiarized the public with its name and the quality of its products; the effect of the adoption by said partnership of a similar name being to cause confusion:

Held, That such false and misleading course of business and advertising, and such simulation, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Leo Cohen and B. Counselbaum, doing business under the firm name and style of The Good Wear Tire & Tube 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 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, Leo Cohen and B. Counselbaum, are now and since March, 1919, have been copartners doing business under the firm name and style of the Good Wear Tire & Tube Co., having their principal office and place of business located in the city of Chicago, State of Illinois, and are now and have been since the month of March, 1919, engaged in the business of selling automobile tires and tubes throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business, respondents purchase second hand or used automobile tires in the various States and Territories of the United States and transport the same through other States and Territories of the United States in and to the city of Chicago, State of Illinois, where the respondents manufacture automobile tires so sold by them by cementing two of such used or secondhand automobile tires together, and then, by sewing two such tires together, when such tires are sold by means of catalogues, circulars, and advertisements, and without such catalogues, circulars, or advertisements, stating that such tires are manufactured from used or secondhand tires; but such catalogues, circulars, and advertisements are worded in such manner as to lead the purchasing public to believe that such tires, sold by respondents, are new and unused tires, with the effect of securing to the respondents an unfair advantage over their competitors, who are engaged in the manufacture and sale of new and unused tires, and with the effect of securing to the respondents an unfair advantage over their competitors engaged in the business of selling reconstructed secondhand or used tires.

PAR. 3. That the Goodyear Tire & Rubber Co. is now and has been for more than one year last past a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal factory and place of business located in the city of Akron, in said State, and with a branch office in the city of Chicago, and with branch offices in other cities of the United States, and engaged in the business of manufacturing new automobile tires and tubes and selling the same throughout the various States and Territories of the United States and the District of Columbia and foreign countries; that said Goodyear Tire & Rubber Co., by means of extensive advertising in catalogues, circulars, newspapers, and magazines, has caused its products to be well known in the trade and to be of a certain quality.

PAR. 4. That the respondents, Leo Cohen and B. Counselbaum, well knowing that the automobile tires and tubes manufactured by the Goodyear Tire & Rubber Co. had been

for years extensively advertised throughout the United States, and well knowing that such products of the Goodyear Tire & Rubber Co. had acquired a certain reputation for quality, and well knowing that the said Goodyear Tire & Rubber Co. had a branch office located in the said city of Chicago, adopted as their trade name Good Wear Tire & Tube Co., which trade name so closely resembles and simulates the name Goodyear Tire & Rubber Co. as to induce and lead the public into believing that in doing business with the Good Wear Tire & Tube Co. they are dealing with the Goodyear Tire & Rubber Co.; that the respondents, trading as the Good Wear Tire & Tube Co., adopted in their advertisements a style and general scheme of the advertisements extensively used by the Goodyear Tire & Rubber Co. for many years, with the effect of causing the public to believe that the automobile tires and tubes advertised for sale in such advertisements were the products of the Goodyear Tire & Rubber Co., and with the further effect of securing to themselves the benefit and advantage of extensive advertising previously done by the Goodyear Tire & Rubber Co., and with the further effect, among others, of causing confusion and embarrassment to the Goodyear Tire & Rubber Co. in the operation of its business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint, in which it is alleged that the above-named respondents have been and now 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, and fully stating its charges in this respect, and the respondent, B. Counselbaum, having entered his appearance, and Sophie Cohn and Samuel M. Chazanoff, having also entered their appearance as respondents herein, and having filed their answer admitting cer-

tain allegations herein contained and denying others, and thereafter having made and executed an agreed statement of facts, which has been filed herein, and in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case in lieu of testimony and shall forthwith proceed upon such agreed statement of facts to make its report, findings as to the facts and conclusion, and such order or orders as it may deem proper to enter thereon, the respondents hereby forever waiving and relinquishing any and all right to the introduction of other and further testimony, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and its conclusions, as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Leo Cohn and B. Counselbaum, during the period between the months of March and July, 1919, were copartners doing business under the firm name and style of The Good Wear Tire & Tube Co.; that in the month of July, 1919, the said Leo Cohn retired from said partnership and was succeeded by Sophie Cohn and Samuel M. Chazanoff, since which time they, together with the respondent, B. Counselbaum, have continued to do business as a copartnership trading under the said firm name and style of The Good Wear Tire & Tube Co., having their principal office and place of business located at 2307-2309 South Indiana Avenue, in the city of Chicago, State of Illinois, and engaged in the business of manufacturing and selling remade or reconstructed automobile tires and in the shipment thereof from their place of business in Chicago, in the State of Illinois, to purchasers thereof in other States and Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations engaged in the manufacture of similar automobile tires and of automobile tires made from new and unused materials.

PAR. 2. That in the conduct of their business the respondents, Sophie Cohn, Samuel M. Chazanoff, and B. Counsel-

baum, purchase second-hand and unserviceable automobile tires in various States of the United States, and transport the same through other States and to the city of Chicago, State of Illinois, where the respondents manufacture automobile tires by cementing and sewing together two of such used and second-hand tires, which the respondents then designate as "Double tread" tires, by which name they are extensively advertised and sold to the public throughout the United States without other words of description which would clearly set forth the nature of the materials of which they are composed, or that they are made out of second-hand and unserviceable tires, as aforesaid; that the effect of the use of such designation without further words of description tends to mislead the purchasing public to believe that such tires are new and unused tires and manufactured from new and unused material.

PAR. 3. That the Goodyear Tire & Rubber Co. is now, and has been for more than one year last past, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal factory and place of business located in the city of Akron, in said State, and with a branch office at 1544–1554 South Indiana Avenue, in the city of Chicago, State of Illinois, and with branch offices in other cities of the United States, and engaged in the business of manufacturing new automobile tires and tubes and selling the same throughout the various States and Territories of the United States and the District of Columbia and in foreign countries; that the said Goodyear Tire & Rubber Co., by means of extensive advertising in catalogues, circulars, newspapers, and magazines, has caused its products to be well known in the trade and to be of a certain quality.

PAR. 4. That the respondents Sophie Cohn, Samuel M. Chazanoff, and B. Counselbaum, with full knowledge of the facts set forth in paragraph 3 hereof, have at all times herein mentioned continued to use as their trade name "The Good Wear Tire & Tube Co.," which trade name so closely resembles the name of the Goodyear Tire & Rubber Co. that the effect thereof has been and is to cause confusion and

embarrassment to the Goodyear Tire & Rubber Co. in the conduct and operation of its business.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, under the circumstances therein set forth, are 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein upon Leo Cohn and B. Counselbaum as copartners, doing business under the firm name and style of The Good Wear Tire & Tube Co., and Sophie Cohn, Samuel M. Chazanoff, and B. Counselbaum having entered their appearance as respondents herein and filed their answer, and thereafter having made, executed, and filed an agreed statement of facts in which it was stipulated that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and should further thereupon make and enter its report, findings as to the facts, and conclusions and such order or orders as it might deem proper to enter thereon, the respondents waiving any and all right to the introduction of other and further testimony, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and its conclusions, and that the above-named respondents had 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; and the Federal Trade Commission having entered its order amending the complaint herein by the substitution of Sophie Cohn and Samuel M. Chazanoff as respondents in the place and stead of Leo Cohn: Now, therefore,

It is ordered, That the respondents and each of them cease and desist from designating and describing the automobile tires manufactured by them by cementing and sewing together two used and second-hand tires, and which are advertised and sold by them in interstate commerce, by the words "Double tread," without the use of other words which will clearly and unmistakably show that said tires are not made from new and unused materials, but are remade and reconstructed tires.

And it is further ordered, That the respondents and each of them cease and desist from doing business in interstate commerce under the firm name and style of The Good Wear Tire & Tube Co., or any similar name designed and calculated to simulate the corporate name of the Goodyear Tire & Rubber Co.

FEDERAL TRADE COMMISSION

v.

MOORE & TIERNEY.

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

Docket 406.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "pure wool," "natural mixed wool," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Moore & Tierney, hereinafter referred to as the respondent, has been and 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, Moore & Tierney, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Cohoes, in said State, and is now and for more than two years last past, has been engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Cohoes, where they are made and manufactured into the finished products and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Cohoes, State of New York, and therefrom to and through other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured

by it and composed but partly of wool as "Pure wool," "Natural mixed wool"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Moore & Tierney, has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Moore & Tierney, is a New York corporation, with its principal place of business

located at the city of Cohoes, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Moore & Tierney, in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Pure wool," "Natural mixed wool."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent. That the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool. That the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the under-

wear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Moore & Tierney, having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Moore & Tierney, its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Pure wool" and "Natural mixed

wool" or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool, worsted, merino, and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

G. H. McDOWELL, TRADING UNDER THE FIRM NAME AND STYLE OF G. H. McDOWELL & CO.

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

Docket 407.—January 29, 1920.

SYLLABUS.

Where an individual engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Australian wool drawers," "Australian wool shirts," "Fine wool shirts," "Fine natural wool shirts," "Fine natural wool vests," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that G. H. Mc-

Dowell, trading under the firm name and style of G. H. McDowell & Co., hereinafter referred to as the respondent, has been and 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, G. H. McDowell, trading under the firm name and style of G. H. McDowell & Co., has his principal office and place of business in the city of Cohoes, State of New York, and is now and for more than two years last past has been engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of his business, purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Cohoes, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Cohoes, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of his business labeled,

advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Australian wool drawers," "Australian wool shirts," "Fine wool shirts," "Fine natural wool shirts," "Fine natural wool vests"; that such advertisements, brands, and labels are false and misleading, and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, G. H. McDowell, trading under the firme name and style of G. H. McDowell & Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered his appearance by his attorney, duly authorized and empowered to act in the premises, and having filed his answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report, stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, G. H. McDowell, trading under the firm name and style of G. H. McDowell & Co., has his principal place of business in the city of Cohoes, State of New York, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted his business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, G. H. McDowell & Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Australian wool drawers," "Australian wool shirts," "Fine wool shirts," "Fine natural wool shirts," "Fine natural wool vests."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent. That the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural

wool," "Natural worsted," and "Australian wool," when, in fact, such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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 and the respondent, G. H. McDowell, trading under the firm name and style of G. H. McDowell & Co., having entered his appearance by Wood, Molloy & France, his attorneys, duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts, in which he stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, G. H. McDowell, trading under the firm name and style of G. H. McDowell & Co., his officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Australian wool," "Fine wool," and "Fine natural wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted merino and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

THE FAITH KNITTING CO.

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

Docket No. 408.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded, and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Men's wool union suits," "Men's wool ribbed shirts," "Wool," "Natural heavy ribbed wool," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Faith Knitting Co., hereinafter referred to as the respondent, has been and 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, the Faith Knitting Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Averill Park, in said State, and is now and for two years last past has been engaged in the manufacture and sale of shirts and underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Averill Park, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Averill Park, State of New York, and therefrom to and

through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed partly of wool as "Men's wool union suits," "Men's wool ribbed shirts," "Wool," "Natural heavy ribbed wool"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, the Faith Knitting Co., has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer, admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony and shall forthwith thereupon make its report, stating its findings as to the facts,

its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument, therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Faith Knitting Co., is a New York corporation, with its principal place of business in the city of Averill Park, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, the Faith Knitting Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Men's wool union suits," "Men's wool ribbed shirts," "Wool," "Natural heavy ribbed wool."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are com-

posed wholly of wool; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, the Faith Knitting Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer, and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case, and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made

and entered its report stating its findings as to the facts, and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, the Faith Knitting Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the labels and brands "Men's wool union suits," "Men's wool ribbed shirts," "Natural heavy-ribbed wool," and "Wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted merino and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

BLACK CAT TEXTILES CO.

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

Docket 409.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised,

and sold certain knit goods as "White worsted," "Natural worsted," "White wool," "Natural wool," "Gray worsted," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Black Cat Textiles Co., hereinafter referred to as the respondent, has been and 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, Black Cat Textiles Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of Kenosha, State of Wisconsin, and is now and for more than two years last past has been engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Kenosha, where they are sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said under-

wear between and among the various States of the United States, and especially to and through the city of Kenosha, State of Wisconsin, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of its underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "White worsted," "White wool," "Blue wool," "Natural worsted," "Natural wool," "Gray worsted"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Black Cat Textiles Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forth-

with thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Black Cat Textiles Co., is a Delaware corporation with its principal place of business in the city of Kenosha, State of Wisconsin, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Black Cat Textiles Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear, as follows: "White worsted," "Natural worsted," "White wool," "Natural wool," "Gray worsted."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of

wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings, the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Black Cat Textiles Co., having entered its appearance by Millor, Mack & Fairchild, its attorneys duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony, or the presentation of argument in sup-

port of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Black Cat Textiles Co., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "White worsted," "White wool," "Natural worsted," "Natural wool," and "Gray worsted," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

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

FEDERAL TRADE COMMISSION

v.

WILLIAM MOORE KNITTING CO.

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

Docket 410.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them

branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Australian wool," "Pure natural wool," "White wool," "Fine natural wool," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Wm. Moore Knitting Co., hereinafter referred to as the respondent, has been and 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, Wm. Moore Knitting Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Cohoes, in said State, and is now and for more than two years last past has been engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Cohoes, where they are made and manufactured into the finished products and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the

United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Cohoes, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of its underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Australian wool," "Pure natural wool," "White wool," "Fine natural wool"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Moore Knitting Co., has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by

the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Moore Knitting Co., is a New York corporation, with its principal place of business in the city of Cohoes, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Moore Knitting Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in the different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Australian wool," "Pure natural wool," "White wool," "Fine natural wool."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed

wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, William Moore Knitting Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer, and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of

the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, William Moore Knitting Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the labels and brands "Australian wool," "Pure natural wool," "White wool," and "Fine natural wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

W. E. TILLOTSON MANUFACTURING CO.

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

Docket 411.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised,

and sold certain knit goods as "Fine natural wool," "Natural wool," "Natural wool random," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that W. E. Tillotson Manufacturing Co., hereinafter referred to as the respondent, has been and 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, W. E. Tillotson Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business in the city of Pittsfield, in said State, and is now and for more than two years last past has been engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Pittsfield, where they are made and manufactured into the finished products and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia,

and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Pittsfield, State of Massachusetts, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Fine natural wool," "Natural wool," "Natural wool random"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, W. E. Tillotson Manufacturing Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect, and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal

Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument, therefore the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, W. E. Tillotson Manufacturing Co. is a Massachusetts corporation, with its principal place of business in the city of Pittsfield, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR 2. That the respondent, W. E. Tillotson Manufacturing Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent, in the sale and shipment of its products in interstate commerce, as hereinbefore described, has labeled, advertised, and branded certain lines of underwear as follows: "Fine natural wool," "Natural wool," "Natural wool random."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe

the said articles branded and labeled as aforesaid are composed wholly of wool; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool." "Natural wool," "Natural worsted," and "Australian wool," when, in fact, such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, W. E. Tillotson Manufacturing Co., having entered its appearance by Hawkins, Ryan & Kellogg, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same and to make and enter its report stating its findings as to the facts, its conclusions, and its order, without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Com-

mission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, W. E. Tillotson Manufacturing Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the labels and brands "Fine natural wool," "Natural wool," and "Natural wool random," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

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

FEDERAL TRADE COMMISSION

v.

HOPE KNITTING CO.

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

Docket 412.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool, and by them branded and labeled as such, branded, labeled, advertised, and

sold certain knit goods as "Wool," "Fine natural wool," "Fine wool ribbed," "Fine camel's hair," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Hope Knitting Co., hereinafter referred to as the respondent, has been and 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, Hope Kittting Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Cohoes, in said State, and is now and for more than two years last past has been engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Cohoes, where they are made and manufactured into the finished products and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times herein-

after mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Cohoes, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Wool," "Fine natural wool," "Fine wool ribbed," "Fine camel's hair"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Hope Knitting Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evi-

dence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Hope Knitting Co., is a New York corporation, with its principal place of business in the city of Cohoes, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Hope Knitting Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Wool," "Fine natural wool," "Fine wool ribbed," "Fine camel's hair."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used

in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Hope Knitting Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduc-

tion of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Hope Knitting Co., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Wool," "Fine natural wool," "Fine wool ribbed," "Fine camel's hair," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool or camel's hair, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified or of camel's hair, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool, worsted, merino, and cotton; worsted, cotton, and artificial silk.)

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

THE LACKAWANNA MILLS.

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

Docket 417.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool, and by them branded

and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Ladies' white wool vests"; "Men's natural-wool shirts"; "Children's natural-wool pants"; "Lackawanna wool underwear, ladies' natural pants"; "Lackawanna wool underwear, children's white pants"; "Lackawanna wool underwear, children's white vests"; "Lackawanna wool underwear, children's natural vests"; "Lackawanna wool underwear, men's white drawers"; "Lackawanna wool underwear, boys' natural drawers"; "Ladies' natural-wool vests," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Lackawanna Mills, hereinafter referred to as the respondent, has been and is 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, 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 Lackawanna Mills, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal factory, office, and place of business located at the city of Scranton, in said State, now and for more than one year last past engaged in manufacturing and selling underwear and other wearing apparel throughout the States and Territories of the United States, and that at all times hereinafter mentioned respondent has carried on and conducted such business in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, The Lackawanna Mills, in the conduct of its business, manufactures such products so sold by it in its factory, located at the city of Scranton, State

of Pennsylvania, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, transporting the same through other States of the United States in and to said city of Scranton, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said products between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of Scranton, State of Pennsylvania, and therefrom to and through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent, The Lackawanna Mills, for more than one year last past in commerce aforesaid has manufactured its products from a fabric composed of wool and cotton, and has sold, labeled, advertised, and branded the same as "Ladies' white wool vests"; Men's natural wool shirts"; "Children's natural wool pants"; "Lackawanna wool underwear, ladies' Natural pants"; "Lackawanna wool underwear, children's white pants"; "Lackawanna wool underwear, children's white vests"; "Lackawanna wool underwear, children's natural vests"; "Lackawanna wool underwear, men's white drawers"; "Lackawanna wool underwear, boys' natural drawers"; "Ladies' natural wool vests"; that such advertising, branding, and labeling is false and deceiving and is calculated and designed to and does mislead the trade and general public into the belief that such underwear and wearing apparel are manufactured, made, and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, The Lackawanna Mills,

has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer, admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated an agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report, stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument, therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Lackawanna Mills, is a Pennsylvania corporation, with its principal place of business in the city of Scranton, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, The Lackawanna Mills, in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from,

and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent, in the sale and shipment of its products in interstate commerce as hereinbefore described, has labeled, advertised, and branded certain lines of underwear as follows: "Ladies' white wool vests"; "Men's natural wool shirts"; "Children's natural wool pants"; "Lackawanna wool underwear, ladies' natural pants"; "Lackawanna wool underwear, children's white pants"; "Lackawanna wool underwear, children's white vests"; "Lackawanna wool underwear, children's natural pants"; "Lackawanna wool underwear, men's white drawers"; "Lackawanna wool underwear, boys' natural drawers"; "Ladies' natural wool vests."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent. That the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool. That the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural Worsted," and "Australian wool," when, in fact, such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings, the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, The Lackawanna Mills, having entered its appearance by Henry P. Molloy, its attorney, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as evidence in this case and in lieu of testimony, and proceed forthwith upon the same and to make and enter its report, stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and its conclusion, that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, The Lackawanna Mills, its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "White wool" and "Natural wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing

the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

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

FEDERAL TRADE COMMISSION

v.

ATLAS KNITTING CO.

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

Docket 418.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Fine merino ribbed union suits," "Men's fine merino shirts," "Men's fine merino drawers," "Men's wool process fine union suits," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Atlas Knitting Co., hereinafter referred to as the respondent, has been and 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 appear-

ing 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, Atlas Knitting Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal factory, office, and place of business located at the town of Amsterdam, in said State, now and for more than one year last past engaged in manufacturing and selling underwear throughout the States and Territories of the United States, and that at all times hereinafter mentioned respondent has carried on and conducted such business in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Atlas Knitting Co., in the conduct of its business manufactures such underwear so sold by it in its factory located at the town of Amsterdam, State of New York, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, transporting the same through other States of the United States in and to said town of Amsterdam, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said underwear between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the town of Amsterdam, State of New York, and therefrom to and through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent, Atlas Knitting Co., for more than one year last past in commerce aforesaid, has manufactured its products from a fabric composed of wool and cotton, and has sold, labeled, advertised, and branded the same as "Fine merino ribbed union suits," "Men's fine

merino shirts," "Men's fine merino drawers," "Men's merino drawers," and "Men's wool process fine union suits"; that such advertising, branding, and labeling is false and deceiving and is calculated and designed to and does mislead the trade and general public into the belief that such underwear is manufactured, made, and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Atlas Knitting Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument, therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Atlas Knitting Co., is a New York corporation, with its principal place of busi-

ness in the town of Amsterdam, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Atlas Knitting Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent, in the sale and shipment of its products in interstate commerce, as hereinbefore described, has labeled, advertised, and branded certain lines of underwear as follows: "Fine merino ribbed union suits," "Men's fine merino shirts," "Men's fine merino drawers," "Men's wool process fine union suits."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly

of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings, the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Atlas Knitting Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts, in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the Atlas Knitting Co., its officers, agents, representatives, servants, and employees, cease and

desist from directly or indirectly employing or using the labels and brands "Fine merino" and "Wool process," or any similar descriptive brands or labels, on underwear, socks, or other knit goods composed partly of wool, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

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

FEDERAL TRADE COMMISSION

v.

THE BROADALBIN KNITTING CO., LTD.

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

Docket 419.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Men's extra heavy merino shirts," "Men's merino underwear," "Men's fine quality merino shirts," "Men's fine quality merino drawers," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that The

Broadalbin Knitting Co., Ltd., hereinafter referred to as the respondent, has been and 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, The Broadalbin Knitting Co., Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the town of Broadalbin, in said State, now and for more than two years last past engaged in the manufacture and sale of shirts and underwear in and among the various States of the United States and the District of Columbia in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business manufactures such shirts and underwear so sold by it at its factory in the town of Broadalbin, State of New York, and purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said town of Broadalbin, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said underwear between and among the various States of the United States, and especially to and through the town of Broadalbin, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of shirts and underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool, as "Men's extra heavy merino shirts," "Men's merino underwear," "Men's fine quality merino shirts," "Men's fine quality merino drawers"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such shirts and underwear are manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, The Broadalbin Knitting Co., Ltd., has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report, stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction

of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Broadalbin Knitting Co., Ltd., is a New York corporation, with its principal place of business in the town of Broadalbin, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, The Broadalbin Knitting Co., Ltd., in the conduct of its business, manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce, as hereinbefore described, has labeled, advertised, and branded certain lines of underwear as follows: "Men's extra heavy merino shirts," "Men's merino underwear," "Men's fine quality merino shirts," "Men's fine quality merino drawers."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed

wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled, as aforesaid, are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, The Broadalbin Knitting Co., Ltd., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its find-

ings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, The Broadalbin Knitting Co., Ltd., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the labels and brands "Extra heavy merino," "Fine quality merino," and "Merino," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

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

FEDERAL TRADE COMMISSION

v.

GLASTONBURY KNITTING CO.

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

Docket 420.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and

sold certain knit goods as "Wool," "Australian wool," "Fine wool," "Natural wool," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Glastonbury Knitting Co., hereinafter referred to as the respondent, has been and 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, the Glastonbury Knitting Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business in the town of Glastonbury, in said State, now and for more than two years last past engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business manufactures such underwear so sold by it at its factory in the town of Glastonbury, State of Connecticut, and purchases and enters into contracts for the purchase of necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said town of Glastonbury, where they are made and manufactured into the finished product and sold and shipped to pur-

chasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the town of Glastonbury, State of Connecticut, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business, labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Wool," "Australian wool," "Fine wool," "Natural wool"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, Glastonbury Knitting Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and

thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Glastonbury Knitting Co., is a Connecticut corporation, with its principal place of business in the town of Glastonbury, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Glastonbury Knitting Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear, as follows: "Wool," "Australian wool," "Fine wool," "Natural wool."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the materials in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent;

that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Natural wool," "Natural worsted," and "Australian wool," when, in fact, such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Glastonbury Knitting Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and

waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Glastonbury Knitting Co., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Wool," "Australian wool," "Fine wool," and "Natural wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

THE NEW ENGLAND KNITTING CO.

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

Docket 421.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manu-

facturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Men's fine merino shirts," "Men's natural wool shirts," "Men's Scotch wool shirts," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The New England Knitting Co., hereinafter referred to as the respondent, has been and 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, The New England Knitting Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, having its principal office and place of business in the town of Winsted, in said State, now and for more than two years last past engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, manufactures such underwear so sold by it at its factory in the town of Winsted, State of Connecticut, and purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States transporting the same through other States of the United States in and to said town of Winsted, where they are made and manufactured into the finished

product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia; and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the town of Winsted, State of Connecticut, and therefrom to and through other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Men's fine merino shirts," "Men's natural wool shirts," "Men's Scotch wool shirts"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, The New England Knitting Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein

set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The New England Knitting Co., is a Connecticut corporation, with its principal place of business in the town of Winsted, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, The New England Knitting Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce, as hereinbefore described, has labeled, advertised, and branded certain lines of underwear as follows: "Men's fine merino shirts," "Men's natural wool shirts," "Men's Scotch wool shirts."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, The New England Knitting Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement

of facts, in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, The New England Knitting Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the labels and brands "Fine merino," "Natural wool," and "Scotch wool," or any similar descriptive brands or labels, on underwear, socks, or other knit goods composed partly of wool, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

CLARKE & HOLSAPPLE MANUFACTURING CO.

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

Docket 422.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Men's wool shirts," "Men's summer merino shirts," although such goods were composed partly of cotton;

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Clarke & Holsapple Manufacturing Co., hereinafter referred to as the respondent, has been and 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, the Clarke & Holsapple Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Cohoes, in said State, now and for more than two years last past engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia in direct

competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the conduct of its business manufactures such underwear so sold by it at its factory in the city of Cohoes, State of New York, and purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Cohoes, where they are manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Cohoes, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Men's wool shirts," "Men's summer merino shirts"; that such advertisements, brands and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Clarke & Holsapple Manufacturing Co., has been for more than one year last past 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Clarke & Holsapple Manufacturing Co., is a New York corporation, with its principal place of business in the city of Cohoes, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Clarke & Holsapple Manufacturing Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Men's wool shirts," "Men's summer merino shirts."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such undearwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondents, Clarke & Holsap-

ple Manufacturing Co., having entered their appearance by J. S. Carter, their attorney, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case, and in lieu of testimony, and proceed forthwith upon the same to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the 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 respondent, Clarke & Holsapple Manufacturing Co., their officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Wool shirts" and "Merino shirts," or any similar descriptive brands or labels, on underwear, socks, or other knit goods composed partly of wool, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool, worsted, merino, and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

ROOT MANUFACTURING CO.

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

Docket 423.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Australian wool," "Natural undyed wool," "Valley cashmere camel's hair," "Lamb's wool," "Scotch wool," "Persian fleece," "Saxony wool,"-although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Root Manufacturing Co., hereinafter referred to as the respondent, has been and 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, Root Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal factory, office, and place of business located at the town of Cohoes, in said State, now and for more than one year last past engaged in manufacturing and

selling underwear throughout the States and Territories of the United States, and that at all times hereinafter mentioned, respondent has carried on and conducted such business in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Root Manufacturing Co., in the conduct of its business, manufactures such underwear so sold by it in its factory located at the town of Cohoes, State of New York, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, transporting the same through other States of the United States in and to said town of Cohoes, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the town of Cohoes, State of New York, and therefrom to and through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent, Root Manufacturing Co., for more than one year last past, in commerce aforesaid, has manufactured its products from a fabric composed of wool and cotton, or camel's hair and cotton, and has sold, labeled, advertised, and branded the same as "Australian wool," "Natural undyed wool," "Valley cashmere camel's hair," "Lamb's wool," "Scotch wool," "Persian fleece," and "Saxony wool"; that such advertising, branding, and labeling is false and deceiving and is calculated and designed to and does mislead the trade and general public into the belief that such underwear is manufactured, made, and composed wholly of wool or camel's hair.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, Root Manufacturing Co., has been for more than one year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Root Manufacturing Co., is a New York corporation, with its principal place of business in the city of Cohoes, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Root Manufacturing Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Australian wool," "Natural undyed wool," "Valley cashmere camel's hair," "Lamb's wool," "Scotch wool," "Persian fleece," "Saxony wool."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent parts of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural Wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Root Manufacturing Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer, and thereafter having made, executed, and filed an agreed statement of facts, in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case, and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report, stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Root Manufacturing Co., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Australian wool," "Natural undyed wool," "Valley cashmere camel's hair," "Lamb's wool," "Scotch wool," "Saxony wool," and "Persian fleece," or any similar descriptive brands or labels on underwear,

socks, or other knit goods composed partly of wool or camel's hair, except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified or of camel's hair or (2) when the term describing the wool stock is joined with the name of the other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool, worsted, merino, and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

PENN LUBRIC OIL CO., TRADING AS MIDWEST LINSEED OIL & PAINT CO.

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

Docket 491.—January 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of oils, greases, and kindred products, and trading as the Midwest Linseed Oil & Paint Co.—

(*a*) advertised a product composed of linseed oil adulterated with a low-grade mineral oil as "Raw commercial linseed oil" and "Boiled commercial linseed oil," thereby misleading purchasers into the belief that they were being supplied with pure linseed oil;

(*b*) sold and offered for sale linseed oil adulterated and mixed with low-grade mineral oil and other ingredients as "Commercial raw linseed oil, not sold or intended for medicinal purposes," and "Commercial boiled linseed oil, not sold or intended for medicinal purposes," without affirmatively indicating that said linseed oil had been adulterated or mixed;

(*c*) used upon its letterheads and advertising circulars distributed among its customers, pictures showing two buildings, one marked "Factory," with an overhead sign bearing the name "Midwest Linseed Oil Co.," the other marked "Dealer," although during the period in which such letterheads and advertising circulars were

used, said corporation had no buildings marked as aforesaid and did not own, occupy, or operate any such large factory as represented by said pictures; with the result of deceiving the trade and general public:

Held, That such adulteration, false and misleading advertising, and false representations, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Penn Lubric Oil Co., trading as Midwest Linseed Oil & Paint Co., 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 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, Penn Lubric Oil Co., is a corporation doing business under the laws of the State of Missouri with its principal office and place of business located at the city of Kansas City, in said State, and is engaged in the business of manufacturing, purchasing, selling, and reselling certain oils, greases, and kindred products under the trade name of Midwest Linseed Oil & Paint Co., in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent purchases the component ingredients used in the manufacture of said oils, greases, and kindred products in various States and Territories of the United States and transports the same through other States and Territories in and to the city of Kansas City, State of Missouri, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and

among other States of the United States, the Territories thereof, and the District of Columbia; and there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia, to and through the city of Kansas City, State of Missouri, and from there to and through other States of the United States, Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, trading under the name Midwest Linseed Oil & Paint Co., for more than a year last past in the sale of certain of its products in interstate commerce has in the conduct of its business labeled and branded certain of its products which are and have been adulterated and mixed with a low grade of mineral oil and other ingredients as "Commercial raw linseed oil" and "Commercial boiled linseed oil, not sold or intended for medicinal purposes"; that such brands and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such products are manufactured and composed wholly of linseed oil.

PAR. 4. That the respondent, trading under the name Midwest Linseed Oil & Paint Co., for more than a year last past has used and is now using a cut upon their letterheads of extensive buildings, one of which is marked "Factory," with an overhead sign bearing the words "Midwest Linseed Oil Co.," and the other marked "Dealer" with an overhead sign "Hardware and paint," with the intent and purpose of deceiving and misleading the trade and general public into believing that the said cut represents the manufacturing plants as shown to be the plant of respondent, when in fact and truth respondent does not own or operate the plant as represented and indicated by the said cut; that such representations so made by respondent on said letterheads are misleading and calculated and designed to and do deceive the trade and general public.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, Penn Lubric Oil Co. (trading as Midwest Linseed Oil Co.), 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent Penn Lubric Oil Co. (trading as Midwest Linseed Oil & Paint Co.), having filed its answer admitting that all the allegations of said complaint and each count and paragraph thereof are true in the manner and form therein set forth, and consenting and agreeing that the Federal Trade Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its conclusions of law and its order disposing of this proceeding without the introduction of testimony or the presentation of argument: therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Penn Lublic Oil Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, having its principal office and place of business located at Twenty-eighth and Southwest Boulevard, in the city of Kansas City, in said State, and is now and for more than one year last past has been engaged in the business of manufacturing, purchasing, selling, and reselling certain oils, greases, and kindred products in interstate commerce throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartners, or corporations similarly engaged.

PAR. 2. That for more than one year last past respondent, Penn Lubric Oil Co., has carried on and conducted the linseed oil and paint department of its business under the trade name and style of Midwest Linseed Oil & Paint Co.

PAR. 3. That the respondent, trading under the name and style of Midwest Linseed Oil & Paint Co., in the conduct of its linseed-oil business, has never manufactured linseed oil, but purchases pure linseed oil from various dealers in such oils wherever it can buy to the best advantage and transports said oil to its factory, where it is adulterated, mixed, or compounded with a low-grade mineral oil and other ingredients, according to a formula, under high heat temperature and then sold to the public in interstate commerce.

PAR. 4. That for more than one year last past respondent, trading under the name and style of Midwest Linseed Oil & Paint Co. in the conduct of its business, as aforesaid, has published and circulated advertising matter in which it has offered for sale to the public a product which it calls "Raw commercial linseed oil," and "Boiled commercial linseed oil," which said linseed oil is not pure linseed oil but is adulterated, mixed, or compounded with a low-grade mineral oil, as aforesaid, and said terms are calculated and designed to and do lead the customers and purchasers of respondent's product to believe that they are being supplied with pure linseed oil.

PAR. 5. That for more than one year last past the respondent, trading under the name and style of Midwest Linseed Oil & Paint Co., has in the conduct of its business, as aforesaid, sold and offered for sale linseed oil which has been adulterated and mixed with a low-grade mineral oil and other ingredients under the label or brand "Commercial raw linseed oil, not sold or intended for medicinal purposes," and "Commercial boiled linseed oil, not sold or intended for medicinal purposes," which said label or brand does not notify, inform, or indicate to the purchasers thereof that the linseed oil has been adulterated, mixed, or compounded, as aforesaid.

PAR. 6. That for more than one year last past the respondent, trading under the name and style of Midwest Linseed

Oil & Paint Co., in the conduct of its business, as aforesaid, has used upon its letterheads and advertising circulars which were circulated among its customers a certain cut or picture representing two buildings, one of which is marked "Factory," with an overhead sign bearing the name "Midwest Linseed Oil Co.," and the other marked "Dealer"; that during the time in which respondent used, circulated, and published such letterheads and advertising circulars containing such pictures and representations it had no buildings marked "Factory" bearing the sign "Midwest Linseed Oil Co.," or "Dealer," and did not own, lease, occupy, or operate any such large factory as represented by said cut or picture, and that such representations on its letterheads and advertising circulars were calculated and designed to and did deceive the trade and general public.

PAR. 7. That the effect of the acts and practices in the manner and form above mentioned and set forth may be to hinder, harass, and embarrass competitors of the respondent in the conduct of their business.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings of facts in paragraphs 4, 5, and 6, and each and all of them are under the circumstances therein set forth unfair methods of competition in interstate commerce in violation of an act of Congress approved September 26, 1916, 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, and the respondent, Penn Lubric Oil Co. (trading as Midwest Linseed Oil & Paint Co.), having filed its answer in which it consented and agreed that the Federal Trade Commission shall proceed forthwith upon the same and make and enter its report stating its findings as to the facts, its conclusion, and its order, without the introduction of testimony, and waiving any and all right to re-

quire the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Penn Lubric Oil Co. (trading as Midwest Linseed Oil & Paint Co.), its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(1) Using cuts, prints, pictures, or other representations on its letterheads or in its advertisements or other printed matter circulated and published by it which falsely represent its office or factory or plant or equipment or place of business.

(2) Selling or offering for sale linseed oil which has been adulterated, mixed, or compounded with low-grade mineral oil and other ingredients as "Commercial raw linseed oil, not sold or intended for medicinal purposes," and "Commercial boiled linseed oil, not sold or intended for medicinal purposes," without notifying or informing or indicating to the purchasers thereof that the same is adulterated, compounded, or mixed, as aforesaid.

(3) From selling or offering for sale any compound or mixture of linseed oil with cheaper oils, chemicals, or other ingredients as and for pure linseed oil.

(4) From publishing, circulating, or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, or foreign countries advertisements, circular letters, or any other printed matter whatsoever wherein it is stated, set forth, or held out to the trade and general public that the respondent is offering to sell linseed oil when the product so offered or advertised has been adulterated, mixed, or compounded with baser mineral oil, chemicals, or other ingredients unless it is clearly, definitely, and distinctly

stated or indicated or shown to the purchasers or prospective purchasers thereof the true character of the same.

(5) From selling or offering for sale in any manner whatsoever paints, oils, greases, and kindred products which have been adulterated or which contain adulterated ingredients as and for pure products.

It is further ordered, That the respondent, Penn Lubric Co. (trading as Midwest Linseed Oil & Paint Co.), shall within 60 days from the date 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.

JACOB LANSKI.

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

Docket 276.—February 5, 1920.

SYLLABUS.

Where an individual engaged in the business of buying, selling, and shipping iron and steel scrap, in direct competition with a corporation having a similar name, at different times accepted and converted to his own use shipments of iron and steel scrap theretofore purchased by, and consigned to, said corporation, with full knowledge that such corporation was the consignee—

Held, That such acts of conversion constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Jacob Lanski, hereinafter referred to as respondent, has been for more than a year last past 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, 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. The respondent is now and for more than one year last past has been engaged at the city of Chicago, in the State of Illinois, in the business of buying, selling, and shipping iron and steel scrap generally in interstate commerce throughout the States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. The I. Lanski & Son Scrap Iron Co., a corporation, is now and for more than one year last past has been engaged at the city of Chicago, in the State of Illinois, in the business of buying, selling, and shipping iron and steel scrap generally in interstate commerce throughout the States and Territories of the United States in direct competition with the respondent and other persons, firms, copartnerships, and corporations similarly engaged; that immediately prior to the time that respondent engaged in the business hereinbefore described he was a stockholder in and associated with his cousin, I. Lanski, in managing the business of the I. Lanski & Son Scrap Iron Co.

PAR. 3. The respondent and the I. Lanski & Son Scrap Iron Co. in carrying on their business severally purchase iron and steel scrap in carload lots from various dealers located in numerous States of the United States, and cause such iron and steel scrap to be shipped by rail to their respective yards at Chicago, Ill., where it is unloaded, separated, sorted, classified, and sold and shipped in interstate commerce to purchasers thereof located in the various States and Territories of the United States.

PAR. 4. That at various times during the year 1918 certain railway companies caused to be diverted and delivered to the respondent at his yards in Chicago, Ill., several car-

loads of iron and steel scrap that had been theretofore purchased by and shipped and consigned to the I. Lanski & Son Scrap Iron Co. at its yards in Chicago, Ill.; that the respondent, without having any invoices, bills of lading, or other grounds for believing that said shipments were intended for him, accepted, unloaded, and converted to his own use said cars of iron and steel scrap so diverted; that owing to the similarity of names of the respondent and I. Lanski & Son Scrap Iron Co., freight bills and other correspondence relating to said shipments, and intended for the I. Lanski & Son Scrap Iron Co. were at various times, by mistake, delivered through the mails to the respondent, and that the respondent, by means of the information therein contained, learned the names of numerous dealers with whom the I. Lanski & Son Scrap Iron Co. was transacting business, and by correspondence with such persons, and by offering to pay them higher than market value for iron and steel scrap, and by various other practices, attempted to induce such persons to transact their business with him; that the effect of the respondent's acts in accepting and converting to his own use iron and steel scrap shipped and consigned to the I. Lanski & Son Scrap Iron Co., and in obtaining and making use of the names of dealers with whom that company was transacting business, has been to stifle and suppress competition in the purchase, sale, and shipment of iron and steel scrap in interstate commerce throughout the States and Territories of the United States and to cause pecuniary loss, inconveniences, delay, and confusion to the I. Lanski & Son Scrap Iron Co. in conducting its business.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

A complaint having been issued by the Federal Trade Commission in the above-entitled proceeding, and the respondent therein named having filed his answer herein, and evidence having been adduced by the respective parties to said proceeding, and the Commission having considered the same, together with the written briefs and arguments of the

attorneys for the said parties, and the Commission being now fully advised in the premises, reports and finds as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Jacob Lanski, is now and for more than one year last past has been engaged at the city of Chicago, in the State of Illinois, in the business of buying, selling, and shipping iron and steel scrap in commerce throughout the States and Territories of the United States, and has carried on and conducted his business in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That I. Lanski & Son Scrap Iron Co. is an Illinois corporation, and for more than a year last past has been engaged at the city of Chicago, in the State of Illinois, in the business of buying, selling, and shipping iron and steel scrap in commerce throughout the States of the United States in direct competition with Jacob Lanski and other persons, firms, and corporations similarly engaged.

PAR. 3. That Jacob Lanski and the I. Lanski & Son Scrap Iron Co. in the conduct of their business, severally purchase iron and steel scrap in carload lots from various dealers located in various States of the United States, and each of them causes such iron and steel scrap to be shipped to their respective yards at Chicago, Ill., where it is unloaded, separated, classified, and sold and shipped to purchasers thereof, located in the various States of the United States.

PAR. 4. That during the year 1918 certain railway companies caused to be delivered to the respondent at his yards in Chicago, Ill., seven carloads of iron and steel scrap that had been theretofore purchased by and consigned to the I. Lanski & Son Scrap Iron Co., at its yards in Chicago, Ill.; that the respondent without having invoices, bills of lading, purchase contracts, or negotiations with the shipper, sufficient to justify the acceptance of the seven cars, or for believing that said shipments were intended for him, accepted, unloaded, and converted to his own use the said seven cars of iron and steel scrap; that during the year

1917 two cars of scrap iron shipped and consigned to the I. Lanski & Son Scrap Iron Co. were accepted, unloaded, and converted to the use of respondent, and that respondent had no bill of lading, purchase contract, invoice, or negotiation with the shipper of said cars sufficient to justify him to believe that same belonged to him; that the effect of the respondent's acts in accepting and converting to his own use the said nine cars of scrap iron caused the I. Lanski & Son Scrap Iron Co. to suffer a pecuniary loss and confusion and delay in the conduct of its business.

CONCLUSION.

From the foregoing findings the Commission concludes that the methods of competition set forth in paragraph 4 of said findings is, under the circumstances therein set forth, 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, and the said respondent, Jacob Lanski, having filed his answer admitting certain allegations of the complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having offered testimony in his behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and facts in said proceeding, and the Commission having made and filed its report containing its findings as to the facts and conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Jacob Lanski, his agents and employees, cease and desist while engaged in

competition in commerce among the several States of the United States from accepting and unloading cars of iron and steel scrap, where there is doubt whether the consignee is Jacob Lanski or the I. Lanski & Son Scrap Iron Co., until every available source of information establishing ownership has been investigated and that a record of the investigation to establish ownership of such cars be kept.

FEDERAL TRADE COMMISSION

v.

HIMES UNDERWEAR CO.

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

Docket 470.—February 5, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel in competition with manufacturers making underwear composed wholly of wool, and by them branded and labeled as such—

(*a*) branded, labeled, advertised, and sold certain knit goods as "Fine natural wool," although such goods were composed partly of cotton; and

(*b*) applied the label and brand "Men's fine Jaeger drawers" to certain of its underwear, and so advertised and sold the same to the purchasing public; notwithstanding the fact that "Dr. Jaeger's health underwear" was then a well-known brand of underwear, already identified in the public mind with a particular manufacturer, thereby misleading the purchasing public into believing that the product was the genuine "Dr. Jaeger's health underwear":

Held, That such branding, labeling, advertising, and sales, and such simulation, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Himes Underwear Co., hereinafter referred to as the respondent,

has been and 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, the Himes Underwear Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Cohoes, in said State, and is now and for two years last past has been engaged in the manufacture and sale of shirts and underwear in and among the various States of the United States and the District of Columbia in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States in and to said city of Cohoes, State of New York, where they are made and manufactured into the finished products and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Cohoes, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in inter-

state commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed partly of wool as "Fine natural wool"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

PAR. 4. That a certain brand of underwear, viz, "Dr. Jaeger's health underwear," is a staple product, and has been manufactured and sold to the trade located in the various States of the United States for several years last past, and by means of extensive advertising in newspapers, magazines, trade papers, etc., "Dr. Jaeger's health underwear" has become well known to the trade and purchasing public and to be of a certain quality.

PAR. 5. That the respondent, Himes Underwear Co., well knowing that "Dr. Jaeger's health underwear" had been for years extensively advertised throughout the United States and well knowing that this product had acquired a certain reputation for quality, adopted the label or brand "Men's fine Jaeger drawers," which label or brand so closely resembles and simulates the brand "Dr. Jaeger's health underwear" as to deceive and mislead the purchasing public into believing that respondent's product is one and the same as that of the aforesaid "Dr. Jaeger's health underwear," and with the effect of securing to the respondent the benefit and advantage of extensive advertising previously done by the manufacturers of the said "Dr. Jaeger's health underwear."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, Himes Underwear Co., has been for more than one year last past 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 Com-

mission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its vice president, E. L. Orth, duly authorized and empowered to act in the premises, and having filed its answer, admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report, stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Himes Underwear Co., is a New York corporation, with its principal place of business located in the city of Cohoes, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, Himes Underwear Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That the respondent did, prior to the 1st day of July, 1919, but not since this date, in the sale and shipment of certain of its knit goods in interstate commerce as above described, label, advertise, and brand such knit goods as "Fine natural wool."

PAR. 4. That the aforesaid knit goods are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in said articles varying from 20 to 80 per cent; that the aforesaid brand and label does not show or indicate the true composition and constituent parts of the materials used in the manufacture of said knit goods; that the brand and label used to mark the said knit goods named in paragraph 3 indicates the same is composed wholly of wool, and thereby the purchasing public is led to believe the said knit goods branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when, in fact, such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

PAR. 6. That "Dr. Jaeger's health underwear" is a staple brand of underwear and has been manufactured and sold to the trade located in the various States of the United States for several years last past and as such has become well known to the trade and to the purchasing public and is recognized to be of a certain standard quality by virtue of long use and extensive advertising; that the respondent adopted the label and brand "Men's fine Jaeger drawers" and applied the same to certain of its underwear and advertised and sold same to the purchasing public; that this label and brand does resemble and simulate the aforesaid brand, "Dr. Jaeger's health underwear," and misleads and confuses the purchasing public into believing that respondent's un-

derwear is one and the same as that of the aforesaid "Dr. Jaeger's health underwear"; that the respondent ceased using the label "Men's fine Jaeger drawers" July 1, 1919, and has not since this date used the said brand and label.

CONCLUSIONS.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, Himes Underwear Co., having entered its appearance by E. L. Orth, its vice president, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts, in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report, stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Himes Underwear Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly, first, employing

or using the label and brand "Fine natural wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool, worsted, merino, and cotton; worsted, cotton, and artificial silk); second, employing or using as a brand or label or in any manner whatsoever the name "Jaeger" to designate its underwear.

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

JAMES DUFFY, TRADING AS THE SANITARY TURPENTINE CO.

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

Docket 493.—February 5, 1920.

SYLLABUS.

Where a dealer in linseed oil, turpentine, and kindred products—

(*a*) advertised and sold linseed oil adulterated with mineral oil or other ingredients as "Linseed oil, raw or boiled," thereby misleading purchasers into believing that they were buying pure linseed oil;

(*b*) advertised and sold turpentine adulterated with mineral oil or other ingredients as "Turpentine," thereby misleading purchasers into believing that they were buying pure turpentine;

(*c*) advertised and sold turpentine adulterated with mineral oil and other ingredients as "Second-run turpentine," although there is no product commercially known as "Second-run turpentine," thereby misleading purchasers into believing that they were buying pure turpentine;

(*d*) advertised and sold a composition containing linseed oil, mineral oil, vegetable oil, and other ingredients, as "Sunflower Brand boiled oil"—the words "boiled oil" being generally understood in the paint trade to mean boiled pure linseed oil—and stated that such product was a competitor of linseed oil and actually boiled to 212° F.; the use of such designation misleading customers and competitors into believing the product was pure lineseed oil:

Held, That such false and misleading advertising, and branding, and such sales constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that James Duffy, trading as the Sanitary Turpentine Co., hereinafter referred to as the respondent, has been and 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, upon information and belief as follows:

PARAGRAPH 1. That the respondent, James Duffy, trading under the name of the Sanitary Turpentine Co., for more than a year last past has been engaged in the sale of linseed oil, turpentine, and kindred products, and in the transportation of same from his place of business in the city of Chicago, in the State of Illinois, to purchasers thereof in other States of the United States, in direct competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, during the past year in the conduct of his business of selling linseed oil, turpentine, and kindred products in interstate commerce as aforesaid, in circulars and other advertising matter distributed by him among the trade throughout the United States, has designated and described certain of the products sold by him

which have been mixed and adulterated with low-grade mineral oils as "Linseed oil, raw or boiled," "Sunflower Brand boiled oil," "Turpentine," and "Second-run turpentine," and that the effect of such designations and descriptions has been to mislead and deceive the trade and purchasing public into the belief that such products are composed wholly of linseed oil or turpentine.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, James Duffy, trading as the Sanitary Turpentine Co., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect; and the respondent, James Duffy, trading as the Sanitary Turpentine Co., having entered his appearance by Max P. Goodman, Esq., his attorney, duly authorized and empowered to act in the premises, and having filed his answer admitting that certain of the methods and things alleged in the said complaint are true in the manner and form therein set forth, and denying certain other allegations and counts contained therein; and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith and thereupon make and enter its report stating its findings as to the facts and its conclusions of law and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, James Duffy, is an individual trading under the name and style of Sanitary Turpentine Co., in the city of Chicago, in the State of Illinois, and is now and at all times hereinafter mentioned has been engaged in the purchase and sale of linseed oil and turpentine and kindred products and the manufacture and sale of compounded composites of linseed oil, turpentine, and other oils in interstate commerce throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, James Duffy, trading under the name and style of Sanitary Turpentine Co., in the conduct of his linseed-oil business, does not and has not at any time hereinafter mentioned manufactured linseed oil; but purchases pure linseed oil from various dealers in such oil wherever he can buy to the best advantage and transports said oil to his factory where it is adulterated, mixed, or compounded with mineral oils and other ingredients and sold to the public in interstate commerce.

PAR. 3. That the respondent, James Duffy, trading under the name and style of Sanitary Turpentine Co., in the conduct of his turpentine business, does not and has not, and has not at any time hereinafter mentioned, manufactured turpentine; but purchases pure turpentine from various dealers in such product, wherever he can buy to the best advantage, and transports said turpentine to his factory where it is adulterated, compounded, or mixed with mineral oil or other ingredients and sold to the public in interstate commerce.

PAR. 4. That for more than one year last past respondent, trading under the name and style of Sanitary Turpentine Co., in the conduct of his business, has published and circulated advertising matter among the trade throughout the United States, in which he offers for sale to the public certain products which he has designated and described as

"Linseed oil, raw or boiled," which said linseed oil is not pure linseed oil but is adulterated, mixed, or compounded with mineral oil or other ingredients, as aforesaid, and said term is calculated and designed to and does lead the customers and purchasers of such particular product of respondent to believe that they are being supplied with pure linseed oil.

PAR. 5. That for more than one year last past respondent, trading under the name and style of Sanitary Turpentine Co., in the conduct of his business, has published and circulated advertising matter among the trade throughout the United States, in which he offers for sale to the public a product which he designates as "Turpentine," which said turpentine is not pure turpentine, but is adulterated, mixed, or compounded with mineral oil or other ingredients, and said term is calculated and designed to and does lead the customers and purchasers of such product of respondent to believe that they are being supplied with pure turpentine.

PAR. 6. That for more than one year last past the respondent, trading under the name and style of Sanitary Turpentine Co., in the conduct of his business has published and circulated advertising matter among the trade throughout the United States in which he offers for sale a product which he designates "Second-run turpentine"; that there is no such product commercially known as "Second-run turpentine"; that respondent's so-called "Second-run turpentine" is composed of a certain percentage of turpentine and is adulterated, mixed, or compounded with mineral oil and other ingredients, as aforesaid, and that said term is calculated and designed to and does lead the customers and purchasers of such product of respondent to believe that they are being supplied with pure turpentine. And, further, the application of the term "Second-run turpentine" to a mixture which contains turpentine may be understood to imply that the product has been obtained by second running of pine trees from which commercial turpentine has been taken.

PAR. 7. That for more than one year last past the respondent, trading under the name and style of Sanitary Turpen-

tine Co., in the conduct of his business has purchased and circulated advertising matter among the trade throughout the United States in which he offers for sale to the public a product which he designates "Sunflower Brand boiled oil"; that in the paint trade the words "boiled oil" applied to a product are generally understood, in the absence of a specific designation otherwise, to mean that the said oil is pure linseed oil which has been boiled; that the said product of respondent is a carefully prepared composition containing from 50 to 65 per cent linseed oil and from 35 to 50 per cent mineral oil, vegetable oil, and other ingredients; that respondent in his advertising matter has stated that said brand is a competitor of and to linseed oil, and that said product is actually boiled to 212° F.; that the said designation "Sunflower Brand boiled oil" may and does mislead the customers and competitors of said respondent to believe that they are being supplied with pure linseed oil.

PAR. 8. That for more than one year last past the respondent, trading under the name and style of Sanitary Turpentine Co., has in the conduct of his business, as aforesaid, sold and offered for sale linseed oil which has been adulterated and mixed with mineral oil and other ingredients under the label or brand "Linseed oil, raw or boiled"; that for a like period in the conduct of his business, as aforesaid. respondent has sold and offered for sale turpentine which has been adulterated and mixed with mineral oil and other ingredients under the label or brand "Turpentine"; that for a like period in the conduct of his business, as aforesaid, respondent has sold and offered for sale turpentine which has been adulterated and mixed with mineral oil and other ingredients under the label or brand "Second-run turpentine"; that for a like period in the conduct of his business, as aforesaid, respondent has sold and offered for sale linseed oil which has been adulterated or mixed with mineral oil and other ingredients under the label or brand "Sunflower Brand boiled oil"; which said labels or brands do not notify, inform, or indicate to the purchasers thereof that the said linseed oil and turpentine has been adulterated or mixed or compounded as aforesaid.

PAR. 9. That the effect of the acts and practices in the manner and form above-mentioned and set forth may be to hinder, harass, and embarrass competitors of the respondent in the conduct of their business.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 4, 5, 6, 7, and 8, and each and all of them, are, under the circumstances therein set forth, 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 and the respondent, James Duffy, trading as the Sanitary Turpentine Co., having entered his appearance by Max P. Goodman, Esq., his attorney, duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts, in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts and conclusions, and its order, without the introduction of testimony and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions, that the respondent, James Duffy, trading as the Sanitary Turpentine Co., has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, James Duffy, trading as the Sanitary Turpentine Co., his agents, representatives, servants, and employees cease and desist from directly or indirectly—

(1) Selling or offering for sale linseed oil, turpentine, and kindred products which have been adulterated, mixed, or compounded with mineral oil or other ingredients without notifying or informing or indicating to purchasers thereof that the same are adulterated, compounded, or mixed, as aforesaid.

(2) From selling or offering for sale any compound or mixture of linseed oil or turpentine with cheaper oils or other ingredients as and for pure linseed oil or turpentine.

(3) Selling or offering for sale turpentine which has been adulterated, mixed, or compounded with mineral oil or other ingredients as "Second-run turpentine," without notifying, informing, or indicating to the purchasers thereof that the same is adulterated, compounded, or mixed, as aforesaid.

(4) Selling or offering for sale linseed oil which has been adulterated, mixed, or compounded with mineral oil or other ingredients as "Boiled oil," without notifying or informing or indicating to the purchasers thereof that the same is adulterated, compounded, or mixed, as aforesaid.

(5) From publishing or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, or foreign countries advertisements, circular letters, or other printed matter whatsoever wherein it is stated, set forth, or held out to the general public that the respondent is offering to sell linseed oil or turpentine, when the product so offered or advertised has been adulterated, mixed, or compounded with baser mineral oil or other ingredients, unless there is clearly, definitely, and distinctly stated or indicated or shown to the purchasers or prospective purchasers thereof the true character of the same

(6) From selling or offering for sale in any manner whatsoever linseed oil, turpentine, or kindred products which have been adulterated or which contain adulterated ingredients as and for pure products.

And it is further ordered, That 60 days from the date of this order the respondent herein, James Duffy, trading as the Sanitary Turpentine Co., shall make a report to the Commission setting forth in detail the manner and form in which he has complied with the requirements of this order.

FEDERAL TRADE COMMISSION

v.

CLARENCE L. COX, DOING BUSINESS UNDER THE TRADE NAMES AND STYLES OF OHIO STATE LINSEED CO. AND UNION LINSEED & TURPENTINE CO.

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

Docket 442.—February 25, 1920.

SYLLABUS.

Where an individual engaged in the manufacture and sale of both pure and adulterated linseed oil and turpentine, stated in circular letters and advertising matter that—

(*a*) the adulterated linseed oil and turpentine sold by him were equal to strictly pure linseed oil and turpentine for all painting and technical purposes;

(*b*) such adulterated products were used by some of the largest and most reliable concerns in the country with the best results;

(*c*) only a chemical analysis could disclose the difference between such adulterated products and strictly pure linseed oil and turpentine;

(*d*) such adulterated products were equal in every respect to a strictly pure material for anything but medicinal purposes, and were particularly adapted for all painting purposes, for inside or outside use; and that

(*e*) the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medicinal purposes must be labeled "adulterated";

Whereas linseed oil or turpentine, when adulterated with cottonseed oil, or other vegetable oils or mineral oils which have no preserving, penetrating, or binding qualities, instead of penetrating the wood, binding the color pigment, and forming, through oxidation, a protecting and preserving film, either evaporate, leaving the pigment alone on the surface, where it becomes dust and scales off, or

prevents penetration and creates a hard outside film which cracks or peels; and the only ruling by the Ohio commission was to the effect that all adulterated products must be labeled as such:

Held, That such advertisements and statements, under the circumstances set forth, constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., has been and is 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 with respect thereto 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, Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., is a resident of the State of Ohio, with his principal office and place of business located in the city of Cleveland, now and for more than a year last past engaged in the business of manufacturing and selling linseed oil, turpentine, and kindred products in direct competition with other persons, firms, copartnerships, and corporations.

PAR. 2. That in the conduct of his business the respondent purchases the component ingredients used in the manufacture of linseed oil, turpentine, and kindred products in various States and Territories of the United States and transports the same through other States and Territories to the city of Cleveland, State of Ohio, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States of the United States, the Territories thereof, and the District of Columbia; and there has been

continuously at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia, to and through the city of Cleveland, State of Ohio, and from there to and through the States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent is now and for more than one year last past, with the effect of stifling and suppressing competition in the manufacture of pure and adulterated linseed oil, turpentine, and kindred products, has been selling adulterated linseed oil and adulterated turpentine by representing, holding out, and advertising by means of circulars and by other means that the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medical purposes must be labeled "Adulterated," whereas the only ruling by said commission in this regard was to the effect that all "adulterated" products must be labeled as such; that the adulterated linseed oil and adulterated turpentine sold by him and offered to be sold by him are equal to strictly pure linseed oil and strictly pure turpentine for all painting and technical purposes; that such representations are false and are known by the respondent to be false and are misleading, and are calculated to and designed to and do deceive the trade and general public into believing that such adulterated linseed oil and adulterated turpentine sold and offered to be sold by the respondent are equal to strictly pure linseed oil and strictly pure turpentine.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., hereinafter referred to as respondent, has been for

more than one year last past 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 thereto would be to the interest of the public; and having issued and served a complaint fully stating its charges in that respect; and the respondent having entered his appearance herein and having filed his answer to said complaint, in which answer respondent admitted that certain of the matters and things alleged in said complaint are true in the maner and form therein set forth, and denying others therein contained; and said respondent thereafter having entered into and executed an agreed statement of facts, which has been heretofore filed herein, in which it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as evidence in support of the allegations contained in the complaint herein, and in lieu of testimony, and shall thereupon make its report herein, stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; the Federal Trade Commission, pursuant thereto, now makes and enters this its report, stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Clarence L. Cox, does business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., with principal place of business at Cleveland, Ohio, and is now and for more than two years last past has been engaged in the business of dealing in pure linseed oil and turpentine and manufacturing and dealing in adulterated linseed oil and turpentine, selling same among the States of the United States, and causing same to be transported, when sold, from the State of Ohio, through and into other States of the United States,

in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That in the course of his said business as described in paragraph 1 hereof, respondent, for more than two years last past, has made use of circular letters and advertising matter which contained certain false and misleading statements of and concerning adulterated linseed oil and turpentine sold by him, which statements were to the effect that such adulterated linseed oil and turpentine were equal to the strictly pure linseed oil and turpentine for all painting and technical purposes; that such adulterated products were used by some of the largest and most reliable concerns in the country with the best of results; that only a chemical analysis could determine the difference between such adulterated products and strictly pure linseed oil and turpentine; that such adulterated products were equal in every respect to strictly pure material for anything other than medical purposes, and were particularly adapted for all painting purposes, for inside or outside use; that the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medical purposes must be labeled "adulterated," whereas the only ruling by said commission in this regard, was to the effect that all adulterated products must be labeled as such.

PAR. 3. That linseed oil is used in paints and varnishes because it penetrates the wood, binds the color pigment, and forms, through oxidation, a protecting and preserving film; that turpentine is similarly used for its protecting and preserving properties. That if linseed oil or turpentine be adulterated with cottonseed oil, or other vegetable oil or mineral oils, which have no preserving, penetrating, or binding qualities they either evaporate, leaving the pigment alone on the surface where it becomes dust, or scales off, or prevents penetration and creates a hard outside film which cracks or peels.

CONCLUSIONS.

That the practices of respondent, as set out in the foregoing findings as to facts, under the circumstances stated, are 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, and the respondent, Clarence L. Cox, doing business under the trade names and styles of Ohio State Linseed Co. and Union Linseed & Turpentine Co., having entered his appearance herein, and having filed his answer admitting that certain of the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth; and thereafter having entered into and executed an agreed statement of facts, in which he stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as evidence in support of the allegations contained in the complaint herein and in lieu of testimony, and proceed forthwith upon the same to make and enter its report stating its findings as to facts, its conclusions and order, without the introduction of testimony, waiving any and all right to the introduction of testimony or the presentation of argument; and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, his agents, representatives, servants, and employees cease and desist from stating or representing in circular letters and advertising matter used by him to solicit business in the sale of adulterated linseed oil and adulterated turpentine; that such adulterated products are equal to strictly pure linseed oil and turpenine for all painting and technical purposes and for all purposes other than medical purposes; that only a chemical analysis could determine the difference between such adulterated

products and strictly pure products; that the Ohio State Pure Food and Drug Commission had held that all linseed oil and turpentine not suitable for medical purposes must be labeled "adulterated," and any other statement or representation of the same general import.

It is further ordered, That the respondent make and file with the Commission, on or before June 1, 1920, his report stating in detail the manner and form in which this order has been conformed to, and attach to said report copies of all circular letters and advertising matter used by him subsequent to the date of this order.

FEDERAL TRADE COMMISSION

v.

FEDERAL ROPE CO., INC.

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

Docket 164.—March 4, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of rope—

(*a*) sold as new, rope restranded from yarns of old and used hawsers and so closely resembling new rope manufactured from new and unused fiber and therefore of superior quality, that it could only be distinguished by those skilled in the art of rope making;

(*b*) so simulated certain methods used in packing and distributing new rope as to give its product the appearance of new and unused rope;

(*c*) falsely represented to purchasers and prospective purchasers that its product was made from new and unused fiber and was not restranded from yarn taken from old and used rope;

(*d*) used the word "manila" on its letterheads, price lists, and invoices, and on its tags, stencils, and printed matter attached and applied to said rope, or the wrappings and coverings thereof, and on other printed matter, and by other oral and written statements characterized and described the rope as "manila," although the word "manila" is properly used only to describe rope composed exclusively of pure manila fiber and is by custom and agreement so used by rope manufacturers, and although a large part

of the rope so branded, tagged, or described was not composed of pure manila fiber; and

(*e*) so used letterheads, price lists, tags, stencils, and other printed matter distributed among dealers and consumers of rope or attached and applied to such rope or the wrappings or coverings thereof, as to deceive and mislead the public:

Held, That such false and misleading statements, simulation, and sales, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Federal Rope Co., Inc., hereinafter referred to as the respondent, has been and is 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, 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, Federal Rope Co., Inc., is, 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 New York, having its office and principal place of business in the city of New York, State of New York, and is now, and for more than two years last past, has been engaged in the manufacture and sale of rope in and among the several States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, and corporations engaged in interstate commerce in the manufacture and sale of rope.

PAR. 2. That the respondent in the conduct of its business manufactures its rope in the city of New York, State of New York, and purchases and enters into contracts of purchase for the necessary materials needed therefor, in other States and Territories of the United States, causing the

same to be transported to such factory, where they are made into the finished product and sold and shipped to purchasers thereof; that after such products are so made into the finished product and sold and shipped to purchasers thereof they are continuously moved to, from, and among other States and Territories of the United States, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such rope between and among the various States of the United States and Territories thereof and the District of Columbia.

PAR. 3. That in the manufacture, sale, and use of rope, various names are used and applied to them for the purpose of designating the various materials out of which said ropes are made, and that the word "manila" when applied to rope, both in the technical and popular usage, has a precise and exact meaning, and is only accurately and properly used in identifying and describing rope composed exclusively of new manila fibers, and that by custom and agreement among rope manufacturers generally, the word "manila" is not used in the brand, label, or any printed matter in connection with any rope containing less than 100 per cent pure manila fiber, unless the said word "manila" is qualified by other words conspicuously and clearly showing the percentage of manila hemp in said rope.

PAR. 4. That with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of rope, the respondent, by the use of letterheads, price lists, and other printed matter containing the word "manila," distributed among dealers and consumers of rope, and by the use of tags, stencils, and other printed matter attached and applied to said rope or the wrappings and coverings thereof containing the word "manila," has for more than two years last past represented, and still continues to represent that the said rope manufactured by respondent is composed entirely and exclusively of new manila fiber, which representations are false and misleading, and calculated and designed to mislead and deceive the public into the belief that the said rope manufactured by respondent is composed entirely and exclusively of new and unused manila

fiber, while in fact it is remade from strands taken from old and used rope and contains other than pure manila fiber.

PAR. 5. That it is the common belief and impression among dealers and consumers of rope and the purchasing public generally that rope having the appearance of and sold as new and unused rope is manufactured entirely from new and unused fiber and not from such as was previously taken from old and used rope; that for more than two years last past, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of rope, the respondent has used such methods and devices as letterheads, price lists, tags, stencils, and other printed matter distributed among dealers and consumers of rope or attached and applied to such rope or the wrappings and coverings thereof, and has used certain methods, appearances, and simulations in packing and distributing said rope to the trade and among consumers generally, so as to give said rope the appearance of new and unused rope, which methods and devices have conveyed and do convey, and are calculated and designed to convey, the belief and impression that the said rope manufactured by the respondent is composed of new and unused fibers, and that the respondent has at all times herein mentioned concealed and wholly failed to disclose that the rope so manufactured by the respondent is in fact composed of fiber taken from old and used rope.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, in which it alleged that it had reason to believe that the above-named respondent, Federal Rope Co., Inc., was 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 a proceeding by it in respect thereof would be to the interest of the public and fully stating its charges in that respect, and the respondent

having entered its appearance by its attorneys and having duly filed its answer, and the Commission having introduced testimony in support of the charges in said complaint, and the respondent having introduced testimony in support of its answer to said complaint, and briefs having been filed, and the Commission having heard the arguments of counsel on the merits of the case, and having duly considered the record and being fully advised in the premises, now makes this report and findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Federal Rope Co., Inc., is 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 New York, having its office and principal place of business in the city of New York, State of New York, and is now and for more than two years last past has been engaged in the manufacture and sale of rope and in the shipment of said rope from its said place of business to purchasers thereof in other States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, and corporations engaged in interstate commerce in the manufacture and sale of rope.

PAR. 2. That the nature of respondent's product and the method of its manufacture are as follows: Respondent purchases old and used hawsers and selects therefrom such of its component yarns as it deems fit for further use in the manufacture of rope, and restrands them again into rope. Such restranded rope is sold by the respondent in interstate commerce in direct competition with rope manufactured from new and unused fiber, which it so closely resembles in appearance that it can only be distinguished by those skilled in the art of rope making.

PAR. 3. That the word "manila" when applied to rope, both in the technical and popular usage, has a precise and exact meaning, and is only accurately and properly used in identifying and describing rope composed exclusively of new

manila fibers, and that by custom and agreement among rope manufacturers generally the word "manila" is not used in the brand, label, or any printed matter in connection with any rope containing less than 100 per cent pure manila fiber, unless the said word "manila" is qualified by other words conspicuously and clearly showing the percentage of manila hemp in said rope; that manila fiber surpasses in quality all other fibers used for the manufacture of rope.

PAR. 4. That in the manufacture and sale of rope in interstate commerce the respondent, by the use of letterheads, price lists, and other printed matter containing the word "manila" distributed among dealers and consumers of rope, and by the use of tags, stencils, and other printed matter attached and applied to said rope or the wrappings and coverings thereof containing the word "manila," and by means of invoices accompanying the sale of said rope, wherein such rope is characterized and described, and by means of direct oral and written statements made by the respondent's officers and agents, for a period of more than two years immediately prior to the issuance of the complaint herein, represented to the purchasing public that the said rope manufactured by respondent was composed entirely and exclusively of new manila fiber, which representations were false and misleading, and did mislead and deceive the public into the belief that the said rope manufactured by respondent was composed entirely and exclusively of new and unused manila fiber, while in fact it was remade from yarns taken from old and used rope as aforesaid, and a large part of it was remade from such yarns that contained other than pure manila fiber.

PAR. 5. That it is the common belief and impression among dealers and consumers of rope and the purchasing public generally that rope having the appearance of and sold as new and unused rope is manufactured entirely from new and unused fiber and not from such as was previously taken from old and used rope, and that the greater proportion of rope sold in commerce is manufactured from new fiber, and that the existence of the practice of remaking rope from old and used rope is not generally known to dealers and consumers

of rope, and that such remade rope is much inferior in quality to rope made from new and unused fiber.

PAR. 6. That the respondent for a period of more than two years last past, with intent, purpose, and effect of misleading and deceiving the public in interstate commerce in the manufacture and sale of rope, has used such methods and devices as letterheads, price lists, tags, stencils, and other printed matter distributed among dealers and consumers of rope or attached and applied to such rope or the wrappings and coverings thereof, and has used certain methods and appearances and simulations in packing and distributing said rope to the trade and among consumers generally, so as to give said rope the appearance of new and unused rope, which methods and devices have conveyed and do convey, and are calculated and designed to convey, the belief and impression that the said rope manufactured by the respondent is identical with and made in the same way as the greater proportion of rope which is manufactured from new and unused fibers, and that the respondent has during the times herein mentioned failed to disclose that the rope so manufactured by the respondent is in fact composed of fiber taken from old and used rope.

PAR. 7. That for a period of more than two years last past the respondent on various occasions by means of direct statements made by its officers and agents has falsely represented to purchasers and prospective purchasers of its rope that its said product was made from new and unused fiber, and that it was not restranded from yarn taken from old and used rope as aforesaid.

CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances set forth in the above findings as to the facts, 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, and the above-named respondent, Federal Rope Co., Inc., having entered its appearance by its attorneys and having duly filed its answer to the Commission's complaint, and the Commission having introduced testimony in support of the charges in said complaint, and the respondent having introduced testimony in support of its answer, and the Commission having made and filed its report, stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the above-named respondent, Federal Rope Co., Inc., cease and desist from using the word "manila" in any way to designate and describe rope manufactured by it which is not wholly composed of manila fiber, without the use of such qualifying words as will plainly and unmistakably show the percentage of manila fibers contained therein.

And it is further ordered, That the respondent cease and desist from in any manner advertising, holding out, representing, and selling as new or unused rope any rope not composed of new and unused fibers.

And it is further ordered, That the respondent make and file with the Commission, not later than 60 days from the 12th day of April, A. D. 1920, a report in detail of the manner and form in which this order has been conformed to.

FEDERAL TRADE COMMISSION

v.

THE ELECTRIC APPLIANCE CO., OF BURLINGTON, KANSAS.

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

Docket 340.—March 19, 1920.

SYLLABUS.

Where an Illinois corporation, located at Chicago, had engaged for some years in the manufacture and sale of electric appliances, and had widely advertised its products throughout the country, with the result that its corporate name had become well known to the general public, and a Kansas corporation of identical name, located at Burlington, Kan., and engaged in the manufacture of such electric appliances as belts, insoles, and other similar devices—

(*a*) failed, in using its name in advertisements, pamphlets, booklets, etc., and on certain of its appliances, to indicate also the place of manufacture, with the result that in some instances the general public was misled into believing said corporation to be the Illinois concern; and

(*b*) circulated certain false and misleading advertisements in booklets, and circulars and through agents to the effect that its electric belts were prescribed and recommended by the leading doctors of the United States; that such belts would preserve the health; that its electric insoles would keep the feet at a moderate temperature, both summer and winter; that they would revitalize the blood; and that its electric battery was "Nature's vitalizer", and that it would save doctor's bills:

Held, That such conduct and such false and misleading advertising constituted, under the circumstances set forth, unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that The Electric Appliance Co., 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 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 Electric Appliance Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, having its principal office and place of business in the city of Burlington, in said State, and is now and for several years last past has been engaged in the manufacture and sale in commerce among the several States of the United States of electrical appliances, such as electric belts, electric insoles, and other such devices, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in competition with other persons, firms, corporations, and partnerships similarly engaged.

PAR. 2. That the Electric Appliance Co. is an Illinois corporation, with its principal place of business in Chicago, in said State, and has for several years last past a large and established business in the manufacture and sale in interstate commerce of electrical appliances, and for a number of years has widely advertised its products in the various States and Territories of the United States, with the result that its name has become well known to the general public.

PAR. 3. That the respondent, The Electric Appliance Co., for several years last past, with the intent, purpose, and effect of deceiving and misleading the general public, has marked and designated, and now marks and designates, its products with its corporate name and the letters "U. S. A.," but omits and wholly fails to indicate to the general public the name of the place of manufacture, with the result that the public is led to believe the respondent is one and the same as the aforesaid Electric Appliance Co.

PAR. 4. That the respondent for several years last past, with the intent, purpose, and effect of deceiving and misleading the general public, has circulated and caused to be circulated in newspapers, periodicals, booklets, circulars, and

other publications advertisements containing false and misleading statements to the effect that respondent's electric belts are prescribed and recommended by leading doctors of the United States, and will preserve the health; that respondent's electric insoles keep the feet at a moderate temperature both summer and winter and revitalize the blood; that respondent's battery is "Nature's vitalizer," and will save doctors' bills.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, The Electric Appliance Co., of Burlington, Kan., has been for more than one year last past 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 that respect would be to the interest of the public, and having fully stated its charges in that respect, the respondent having entered its appearance by its attorney, L. H. Hannen, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this cause and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and order disposing of this proceeding without the introduction of testimony or the presentation of argument, therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Electric Appliance Co., of Burlington, Kan., is a Kansas corporation, with its principal place of business in the city of Burlington, in said State, and is now and for several years last past has been engaged in the manufacture and sale in commerce among the several States of the United States of electrical appliances, such as electric belts, electric insoles, and other such devices, in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That among the concerns selling electrical appliances is the Electric Appliance Co., of Illinois, a corporation of that State and located in the city of Chicago, which has for several years last past engaged in the manufacture and sale in interstate commerce of electrical appliances; that this company has been in existence for a number of years and has widely advertised its products in the various States and Territories of the United States, with the result that its corporate name has become well known to the general public.

PAR. 3. That the respondent, The Electric Appliance Co., of Burlington, Kan., in the conduct of its business as aforesaid, did in 1915, but not since this date, mark and designate certain of its electrical appliances, viz, electric belts, electric insoles, etc., with its corporate name (Electric Appliance Co.) and the letters "U. S. A.," but omitted and wholly failed to indicate the name of the place of manufacture; that the respondent circulated advertisements, circulars, pamphlets, and booklets signed with its corporate name (Electric Appliance Co.) and the letters "U. S. A.," but omitted and wholly failed to indicate the name of the place of manufacture. That as a result of the respondent in failing to indicate upon articles manufactured by it and in its advertising matter, the name of the place of manufacture, in some instances the general public was led to believe the respondent to be one and the same as that of the aforesaid Electric Appliance Co., of Illinois.

PAR. 4. That the respondent for several years last past in the conduct of its business as aforesaid, circulated certain

advertisements in booklets, circulars, and by agents wherein statements were made to the effect that respondent's electrical belts are prescribed and recommended by the leading doctors of the United States; that such belts will preserve the health; that respondent's electrical insoles keep the feet at a moderate temperature, both summer and winter; that they revitalize the blood; that respondent's electric battery is "Nature's vitalizer; that it will save doctor bills"; that the effect of these statements as they appeared in respondent's advertising matter has been to mislead the general public into the belief that respondent's aforesaid articles possess wonderful curative values; that the aforesaid advertising matter has been discontinued by the respondent and has been so discontinued for some time last past.

CONCLUSIONS.

From the foregoing findings, the Commission concludes that the methods of competition set forth are, under the circumstances, 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, and the respondent, The Electric Appliance Co., of Burlington, Kan., having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement of facts in which he stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Com-

mission having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, (1) That the respondent, The Electric Appliance Co., of Burlintgon, Kan., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly marking or designating its products in such manner and in such way as to lead the general public to believe that its products are manufactured by concerns other than itself.

(2) Marking, wording, or designating its advertising matter in such manner and form as to lead the general public to believe that the products therein advertised are manufactured by concerns other than itself.

(3) Advertising and representing that its products possess such curative qualities as set forth in the foregoing findings.

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

FEDERAL TRADE COMMISSION

v.

THE ROB ROY HOSIERY CO.

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

Docket 538.—March 19, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, in competition with manufacturers making underwear composed wholly of wool and by them branded and labeled as such, branded, labeled, advertised, and sold certain knit goods as "Natural gray," "Fine natural wool," "Fine

Australian white lamb's wool," "Natural wool," "White wool," "Fine natural gray Australian wool," although such goods were composed partly of cotton:

Held, That such branding, labeling, advertising, and sales, under the circumstances set forth, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Rob Roy Hosiery Co., hereinafter referred to as the respondent, has been and 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, Rob Roy Hosiery Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of Troy, in said State, and is now and for more than two years last past has been engaged in the manufacture and sale of underwear in and among the various States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, purchases and enters into contracts for the purchase of the necessary component materials needed therefor in the different States of the United States, transporting the same through other States of the United States, in and to said city of Troy, where they are made and manufactured into the finished products and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among the other States of the United States and the District of Columbia, and there

is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said underwear between and among the various States of the United States, and especially to and through the city of Troy, State of New York, and therefrom to and through the other States of the United States and the District of Columbia.

PAR. 3. That for more than two years last past the respondent, with the effect of stifling and suppressing competition in the manufacture and sale of underwear in interstate commerce, has in the conduct of its business labeled, advertised, and branded certain lines of underwear manufactured by it and composed but partly of wool as "Natural gray," "Fine natural wool," "Fine Australian white lamb's wool," "Natural wool," "White wool," "Fine natural gray Australian wool"; that such advertisements, brands, and labels are false and misleading and calculated and designed to and do deceive the trade and general public into the belief that such underwear is manufactured and composed wholly of wool.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, The Rob Roy Hosiery Co., has been for more than one year last past 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, 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 that respect would be to the interest of the public and fully stating its charges in that respect; and the respondent having entered its appearance by its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and

thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Rob Roy Hosiery Co., is a New York corporation, with its principal place of business located in the city of Troy, in said State, and has for several years been engaged in the manufacture and sale of underwear, shirts, and other wearing apparel throughout the various States of the United States, and has conducted its business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, The Rob Roy Hosiery Co., in the conduct of its business manufactures its products and sells and ships same to purchasers thereof located in different States of the United States; that after such products are so manufactured they are continuously moved to, from, and among the different States of the United States, and there is continually and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States of the United States.

PAR. 3. That for more than a year last past the respondent in the sale and shipment of its products in interstate commerce as hereinbefore described has labeled, advertised, and branded certain lines of underwear as follows: "Natural gray," "Fine natural wool," "Fine Australian white lamb's wool," "Natural wool," "White wool," "Fine natural gray Australian wool."

PAR. 4. That the aforesaid articles of wearing apparel are not composed wholly of wool, part of the material in the said articles being wool and part being cotton, the percentage of wool in the said articles varying from 20 to 80 per cent; that the aforesaid brands and labels do not show or indicate the true composition and constituent part of the materials used in the manufacture of the said articles of wearing apparel; that the brands and labels used to mark the said articles named in paragraph 3 indicate same are composed wholly of wool, and thereby the purchasing public is led to believe the said articles branded and labeled as aforesaid are composed wholly of wool.

PAR. 5. That for the past 20 years it has been a general custom and practice in the underwear business to label and brand underwear as "Natural merino," "Wool," "Natural wool," "Natural worsted," and "Australian wool," when in fact such underwear so described is not composed wholly of wool; that this custom and practice is general in the underwear trade throughout the United States; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as such.

CONCLUSION.

From the foregoing findings the Commission concludes that the method of competition set forth is, under the circumstances set forth, 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, and the respondent, The Rob Roy Hosiery Co., having entered its appearance by Wood, Molloy & France, its attorneys, duly authorized and empowered to act in the premises, and having filed his answer and thereafter having made, executed, and filed an agreed statement

of facts in which he stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, The Rob Roy Hosiery Co., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Natural gray," "Fine natural wool," "Fine Australian white lamb's wool," "Natural wool," "White wool," and "Fine natural gray Australian wool," or any similar descriptive brands or labels on underwear, socks, or other knit goods composed partly of wool, except either (1) when a knit fabric is made entirely of wool yarns of a kind specified, or (2) when the term describing the wool stock is joined with the name of other staple or staples contained in the knitted fabric (e. g., wool and cotton; worsted and cotton; wool-worsted-merino and cotton; worsted, cotton, and artificial silk).

Respondent is further ordered to file a report in writing with the Commission three months from notice hereof stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

MALONEY OIL & MANUFACTURING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 309—April 27, 1920.

SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, buying and selling gasoline, and in transporting and marketing such products, and also engaged in leasing pumps, tanks, and other equipment for the storage and handling of petroleum products in competition with manufacturers and sellers of such equipment, to its retail customers, of whom relatively very few required more than a single pump outfit in the conduct of their business;

Leased to such retailers pumps, tanks, and equipment at a nominal rental, not affording it a reasonable profit on its investment, upon the condition that they should use the same only for the purpose of storing and handling its products, a practice not followed by many competitors, having for its purpose the furtherance of the corporation's petroleum business, and resulting in loss of customers by competitors:

Held, (*a*) That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914, both as against competitors engaged exclusively in the petroleum business, and also as against competitors engaged in the manufacture and sale of such equipment:

(*b*) That the use of such leases, under the circumstances set forth, constituted a violation of Section 3 of the Act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Maloney Oil & Manufacturing Co., hereinafter referred to as the respondent, has been 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, 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, Maloney Oil & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at the city of Scranton in said State; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline, and the leasing and loaning of oil pumps, storage tanks or containers and their equipments in various States of the United States and the District of Columbia in competition with numerous persons, firms, corporations and copartnerships similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil 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 competitors 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 and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the past four years.

PAR. 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 equipments 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.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Maloney Oil & Manufacturing Co., hereinafter referred to as the respondent, has been using unfair methods of competition in interstate commerce, in violation of the provisions of section 3 of the act of Congress, approved October 15, 1914, entitled " An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," 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, Maloney Oil & Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business in the city of Scranton, in said State; that for more than four years last past respondent has been engaged in the business of purchasing and selling refined oil and gasoline and

the leasing of oil pumps and storage tanks and their equipments in various States of the United States and the District of Columbia, in competition with numerous persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent in the conduct of its business, as aforesaid, and as hereinafter more particularly described, purchases refined oil and gasoline, hereinafter referred to as "products," and also purchases oil 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 such products are sold, and such devices sold, 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 the various States of the United States; that there are numerous competitors of respondent who, in the conduct of their businesses 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 such products are sold and the aforesaid devices sold, leased, or loaned by such competitors in competition with respondent to various persons, firms, corporations, and copartnerships; that in the conduct of such business, as aforesaid, respondent's competitors constantly move such products and devices from one State to another and there is conducted by said competitors of respondent a constant current of trade in such products and devices between the various States of the United States; that respondent and many of its competitors have conducted their said businesses in a similar manner to that above described throughout the four years last past.

PAR. 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 monoply in the territories and localities where such contracts are operative.

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 respondent, Maloney Oil & Manufacturing Co., 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 has been and now is 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 in respect of such alleged violation of section 5 of an act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having appeared and filed its answer, admitting certain of the allegations of said complaint and denying certain others thereof, and containing certain allegations as affirmative defense, and the Commission having offered testimony in support of the charges of said complaint, and the respondent having rested its case without introducing evidence, and the cause having been duly argued before the Commission, and the Commission

having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the city of Scranton, in the State of Pennsylvania, and is now and has been engaged in the business of purchasing and selling refined oil and gasoline, and is largely engaged in refining crude petroleum, and that it is now and has been during the four years last past, in connection with its aforesaid business, engaged in the leasing and loaning but not in the manufacture of oil pumps, storage tanks, and containers, and equipment hereinafter referred to as devices, in various States of the United States in competition with numerous other persons, firms, copartnerships, and corporations also engaged in the business of selling refined oil and gasoline and refining crude petroleum.

PAR. 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 and also purchases oil pumps, storage tanks, and containers, hereinafter referred to as devices. That respondent has been and now is maintaining numerous storage stations in various States to which it ships from its refineries refined oil and gasoline in bulk. And that the said refined oil and gasoline is thereafter sold and delivered to retail dealers in the said several States. That the respondent, in the course of its said business, leases and delivers said devices to various persons, firms, copartnerships, and corporations in various States other than those in which the said devices are purchased by the respondent; and that in the course of commerce in buying and selling said devices said devices are moved to, through, and among the various States of the United States, and that there is a constant current of trade in the conduct of its said business

in buying and selling said equipment among said various States of the United States.

PAR. 3. That during all of said period respondent, in the course of commerce among the several States and Territories of the United States in the conduct of its business as aforesaid, has been and now is leasing to retailers of its petroleum products said devices for use by such retailers in storing and handling respondent's said petroleum products. That respondent, in leasing such devices as aforesaid during said period, has made and does now make contracts or leases with the said retailers in and by the terms of which the said retailer agrees to use the said device for containing, storing, and vending the products of the respondent exclusively. That the rental or lease charge provided for in such contracts is a nominal sum and that no other consideration for the leasing of such equipments by respondent is provided for by said contracts, and that such devices are leased at nominal rentals as aforesaid to promote and advance respondent's petroleum and gasoline business. That such nominal sums or rentals do not afford a reasonable profit to respondent on the amount invested in such devices. That the respondent leases such equipments in competition in interstate commerce with manufacturers of similar equipments who are engaged in the sale of the same in such commerce.

PAR. 4. That the respondent sells its said products in various States and Territories of the United States in competition with other refiners and wholesale dealers in petroleum products and gasoline, and respondent has practiced the leasing of said devices to retailers in the various States and Territories as aforesaid, as a method of competing with other firms, persons, partnerships, and corporations also engaged in refining and selling in wholesale quantities gasoline, refined oil, and petroleum products.

PAR. 5. That the contracts mentioned herein generally expressly provide that said devices shall be used by the lessees only for the purpose of holding and storing the respondent's said petroleum products, and all of said contracts or leases which the respondent has entered into as aforesaid

have been made on the condition, agreement, or understanding that the lessee or purchaser thereof should use the said device only for the purpose of holding and storing petroleum products purchased from the respondent. That a small number of retail dealers to whom the respondent leases or sells such devices upon the terms and conditions aforesaid handle similar products of respondent's competitors, but a large majority of the retailers to whom the respondent leases or sells such devices upon the terms and conditions aforesaid require and use in their business only a single pump outfit.

PAR. 6. That the respondent has practiced the leasing or selling of such devices upon the terms and conditions aforesaid for the purpose of obtaining and holding customers and of preventing its competitors from obtaining as customers the retail dealers with whom it has entered into such contracts or leases as aforesaid.

PAR. 7. That many competitors of the respondent do not sell or lease such devices to retail dealers upon the terms and conditions referred to herein, and such competitors have lost numerous customers to the respondent as a result of the respondent's practice of offering and leasing said devices to such retail dealers upon the terms and conditions aforesaid.

CONCLUSIONS.

That the practice of leasing such devices at a nominal rental and of selling said devices for a nominal consideration is an unfair method of competition in interstate commerce as against the competitors of respondent engaged in the manufacture of such devices and in the sale of the same for profit in the territory wherein the respondent leases such devices and also as against competitors of respondent engaged in the business of refining crude petroleum and selling at wholesale refined oils, gasoline, and petroleum products who do not invest in or make use of such devices for the purpose and on the terms and conditions aforesaid.

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 herein unfair methods of competition in interstate commerce 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," and constitute a violation of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraint and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

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 respondent, Maloney Oil & Manufacturing Co., 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 has been and now is 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 in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance and filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and containing certain allegations as affirmative defense, and the Commission having offered testimony in support of the charges of said complaint, and the respondent having rested its case without introducing evidence, and the cause having been duly argued before the Commission, and the Commission having duly considered the record and being fully advised in the premises, and having made and filed its report, findings, and conclusions, which said report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, Maloney Oil & Manufacturing Co., forever cease and desist from:

(1) Directly or indirectly leasing pumps or tanks, or both, and equipment for storing or handling petroleum products in furtherance of its petroleum business, at a rental which will not yield to it a reasonable profit on the cost of 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 in 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 equipment, 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.

Provided, however, That as to such pumps and tanks and equipments as are now leased by respondent, contrary to the provisions of this order, respondent shall be required, four months from the date of service hereof, to enter into new contracts or agreements with respect to same which shall not be incompatible with the purport and intent of this order.

It is also ordered, Under and by virtue of the authority conferred on the Commission by paragraph B of section 6 of an act to create a Federal Trade Commission, to define its powers and duties, and for other purposes, approved September 26, 1914, that the said Maloney Oil & Manufacturing Company, respondent, shall within 30 days after the expiration of the time allowed for the respondent to comply with the order to cease and desist, report in writing to the Federal Trade Commission, fully stating and setting forth the nature of the changes made in the conduct of its business with

respect to such matter involved in the order to cease and desist, and shall set forth in such report in complete detail the plan or plans adopted for the lease, loan, gift, or sale of any oil tanks and pumps for use in storing refined oil or gasoline, what plan or plans are in use or are proposed to be put in use, and also attach to such report any contracts used by the respondent in the conduct of such business.

The Commission has also issued similar orders in other cases involving substantially the same facts, as shown by the following:

TABLE.

Date.	Dock. No.	Respondent.	Location.	Stipulation or trial.
1919.				
Oct. 14	314*	C. L. Smith Oil & Gasoline Co.....	St. Louis, Mo.....	Trial.
14	336*	Iowa Oil Co.....	Dubuque, Iowa...	Do.
Apr. 27	131	Atlantic Refining Co.....	Philadelphia, Pa..	Do.
27	134	Standard Oil Co. of New York....	New York City...	Do.
27	311	Sterling Oil Corporation.....	Buffalo, N. Y.....	Do.
27	312	Pavania Oil Co.....	Warren, Pa.....	Do.
27	313	Red "C" Oil Mfg. Co.....	Baltimore, Md....	Do.
27	316	Kendall Refining Co.....	Bradford, Pa.....	Do.
27	320	Gulf Refining Co.....	Pittsburgh, Pa....	Do.
27	331	Elmer E. Harris & Co.....	Buffalo, N. Y.....	Do.
27	333	Suor Oil Products Corporation....	.....do.....	Do.
27	337	Standard Oil Co. of New Jersey...	New York City...	Do.
27	373	The Texas Co.....	.....do.....	Do.
1920.				
June 3	132*	The Standard Oil Co. of Ohio.....	Columbus, Ohio...	Stipulation and trial.
3	318*	Paragon Refining Oil Co.....	Toledo, Ohio.....	Do.
3	323*	The Canfield Oil Co.....	Cleveland, Ohio...	Do.
3	327*	The Lily White Oil Co.....	Lima, Ohio.....	Do.

* Modified Sept. 27, 1920.

FEDERAL TRADE COMMMISSION

v.

THE CHAMBERLIN CARTRIDGE & TARGET CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AND OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 279—May 5, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and lease of an extensively used patented trap for throwing clay-pigeon targets, and

also engaged in the manufacture and sale of clay-pigeon targets, in which it did a business very substantially in excess of the aggregate business of all its competitors;

Leased said traps at an inadequate rental, but only on condition that the corporation's targets should be used exclusively with said traps, and that a breach of such condition should forfeit the lease and entitled the lessor to possession, and thus prevented the sale of competitors' targets for use with said traps:

Held, (*a*) That the effect of such leases, under the circumstances set forth, was and might be to substantially lessen competition and tend to create a monopoly in the manufacture and sale of clay-pigeon targets, and that the use of such leases constituted a violation of section 3 of the act of October 15, 1914;

(*b*) That the use of such leases, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Chamberlin Cartridge & Target Co., hereinafter referred to as the respondent, has violated and is 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," hereinafter referred to as the Clayton Act, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Chamberlin Cartridge & Target Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Cleveland, in said State, now and for more than two years last past engaged in the manufacture and sale of clay-pigeon targets and in the manufacture and leasing of a certain patented trap or contrivance for projecting or throwing such clay-pigeon targets, which is known by the brand name of Ideal Leggett Trap, among the several States and Territories of the United States and the District of Columbia, in

direct competition with other persons, firms, copartnerships, and corporations similarly engaged in the manufacture and sale of clay-pigeon targets.

PAR. 2. That the respondent in the conduct of its business manufactures such Ideal Leggett Traps and clay-pigeon targets so leased and sold by it in its factory located in the city of Cleveland, State of Ohio, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, causing the same to be transported to its factory, where they are made into the finished products and leased or sold and shipped to the lessees or purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in the said Ideal Leggett Traps and clay-pigeon targets between and among the various States and Territories of the United States and the District of Columbia, and especially to and though the city of Cleveland, State of Ohio, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the said Ideal Leggett Trap manufactured and leased by the respondent has a wide and extensive use among sportsmen and sportsmen's clubs, and the business of manufacturing and selling clay-pigeon targets which are projected and thrown by these and similar traps constitutes a large and important branch of commerce among the States and Territories of the United States; that such clay-pigeon targets are extensively distributed to the purchasing public through the medium of retail stores dealing in sportsmen's goods throughout the United States, and numerous individuals, firms, and corporations are engaged in the manufacture and sale of such clay-pigeon targets in competition with respondent.

PAR. 4. That the respondent for more than two years last past in the course of interstate commerce and in violation of section 3 of the Clayton Act has leased and is now leasing

large numbers of the aforesaid Ideal Leggett Traps so manufactured by it for use throughout the United States and the Territories thereof and the District of Columbia, and has fixed and is now fixing the rental price charged therefor on the condition, agreement, or understanding that the lessees thereof shall not throw or allow any clay-pigeon targets to be thrown from said traps other than those manufactured and sold by respondent, and shall not use in connection with said traps any clay-pigeon targets manufactured by a competitor or competitors of the respondent; and that the effect of such lease or such condition, agreement, or understanding is to substantially lessen competition and to create a monopoly in the manufacture and sale of clay-pigeon targets.

II.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Chamberlain Cartridge & Target Co., 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, upon information and belief, as follows:

PARAGRAPH 1. That the respondent, the Chamberlin Cartridge & Target Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Cleveland, in said State, now and for more than two years last past engaged in the manufacture and sale of clay-pigeon targets and in the manufacture and leasing of a certain patented trap or contrivance for projecting or throwing such clay-pigeon targets, which is known by the brand name of Ideal Leggett Trap, among the several States and Territories of the United States and the District of Columbia, in direct

competition with other persons, firms, copartnerships, and corporations similarly engaged in the manufacture and sale of clay-pigeon targets.

PAR. 2. That the respondent in the conduct of its business manufactures such Ideal Leggett Traps and clay-pigeon targets so leased and sold by it in its factory located in the city of Cleveland, State of Ohio, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, causing the same to be transported to its factory where they are made into the finished product and leased or sold and shipped to the lessees or purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continously and has been at all times hereinafter mentioned a constant current of trade and commerce in the said Ideal Leggett Traps and clay-pigeon targets between and among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of Cleveland, State of Ohio, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the said Ideal Leggett Trap manufactured and leased by the respondent has a wide and extensive use among sportsmen and sportsmen's clubs, and the business of manufacturing and selling clay-pigeon targets which are projected and thrown by these and similar traps, constitutes a large and important branch of commerce among the States and Territories of the United States; that such clay-pigeon targets are extensively distributed to the purchasing public through the medium of retail stores dealing in sportsmen's goods throughout the United States, and numerous individuals, firms, and corporations are engaged in the manufacture and sale of such clay-pigeon targets in competition with respondent.

PAR. 4. That the respondent, with the effect of stifling and suppressing competition in interstate commerce in the sale of clay-pigeon targets, for more than two years last past has

refused, and still refuses, to lease the aforesaid Ideal Leggett Traps manufactured by it to those who will not agree that said traps shall not be used for throwing any other clay-pigeon targets than those manufactured by the respondent, and has canceled and threatened to cancel, and still continues to cancel and threaten to cancel its leases of said Ideal Leggett Traps and has retaken possession of said traps whenever any of the lessees thereof have used or have attempted to use them for the purpose of throwing clay-pigeon targets manufactured by competitors of the respondent.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having duly issued and served upon the above-named respondent, the Chamberlin Cartridge & Target Co., its complaint herein, wherein it is alleged that it had reason to believe that the said respondent had been and then was violating the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and fully stating its charges in this respect, and the Federal Trade Commission in the said complaint further alleging that it had reason to believe that said respondent had been and then was 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, 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 that respect would be to the interest of the public and fully stating its charges in this respect, and the respondent having entered its appearance by Cook, McGowan, Foote, Bushnell, & Lamb, its attorneys and counsellors, and having filed its answer, admitting certain of the matters alleged and set forth in the complaint, and denying others thereof, and the issues so raised having, pursuant to due notice given to said respondent, come on for hearing, and the Commission having appeared and introduced its evidence in support of its said charges, and the respondent having appeared and

introduced its evidence in denial thereof, and all testimony heard at said hearing having been reduced to writing and together with the evidence received, filed in the office of the Commission, and the Commission and respondent having, through their respective attorneys, submitted briefs and made oral argument herein, the Commission being fully advised in the premises and upon consideration thereof, now makes this its report and findings, and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is now and for more than two years last past has been a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located in the city of Cleveland, in said State.

PAR. 2. That the respondent is now and for more than two years last past has been engaged in the manufacture and sale of clay-pigeon targets branded "Blue Rock" and in the manufacture and lease of a certain patented trap branded "Ideal Leggett" trap, for throwing clay-pigeon targets, in the several States of the United States and the District of Columbia, in competition with other persons, corporations, and firms engaged in the manufacture and sale of clay-pigeon targets.

PAR. 3. That the traps manufactured by respondent and branded "Ideal Leggett" traps are moved from the city of Cleveland, State of Ohio, to and through other States of the United States, and that the clay-pigeon targets manufactured by respondent and branded "Blue Rock" are moved from the city of Findlay, State of Ohio, to and through other States of the United States.

PAR. 4. That the "Ideal Leggett" traps manufactured by respondent have a wide and extensive use among sportsmen and sportsmen's clubs, and that the business of manufacturing and selling "Blue Rock" clay-pigeon targets constitutes a branch of commerce among the States of the United States.

PAR. 5. That prior to October 15, 1914, respondent was, and since last-mentioned date, was and now is the owner of

United States letters patent covering "Ideal Leggett" traps and all "Ideal Leggett" traps manufactured by respondent were made under letters patent of the United States.

PAR. 6. That respondent first began the manufacture, and put on the market, its "Ideal Leggett" traps in the year 1911. That since respondent first began the manufacture of "Ideal Leggett" traps in the year 1911 it has manufactured a total of 1,236 "Ideal Leggett" traps.

PAR. 7. That since respondent first began the manufacture and put on the market "Ideal Leggett" traps in the year 1911, respondent has leased to sportsmen and sportsmen's clubs, located in the various cities of the United States, all "Ideal Leggett" traps manufactured by it for use by the said sportsmen and sportsmen's clubs, on conditions, and with restrictions as set forth in what is designated in the testimony herein, variously as: "Contract," "Lease agreement," and "License of Ideal Leggett trap." That as a part of its system of leasing its "Ideal Leggett" traps, respondent caused to be inserted and written in each of the "Contracts" or "Lease agreements" or "Licenses of Ideal Leggett traps," made and executed by respondent with sportsmen and sportsmen's clubs, a notice, warning, or agreement in words substantially as follows:

That it [lessee] will not throw or allow any targets to be thrown from said trap other than targets manufactured by the first party and branded "Blue Rock Pigeons."

That a breach of this covenant shall work a forfeiture of the said license, and thereupon the first party may take possession of said trap wherever it can be found and at any time after such breach.

PAR. 8. That in the year 1915, respondent had approximately 1,035 "Ideal Leggett" traps leased to sportsmen and sportsmen's clubs of the United States; that in the year 1916, respondent had approximately 1,040 "Ideal Leggett" traps leased to sportsmen and sportsmen's clubs in the United States; that in the year 1917, respondent had approximately 984 "Ideal Leggett" traps leased to sportsmen and sportsmen's clubs in the United States; that in the year 1918, respondent had approximately 883 "Ideal Leggett" traps leased to sportsmen and sportsmen's clubs in the United States; that in the year 1919, respondent had approximately

959 "Ideal Leggett" traps leased to sportsmen and sportsmen's clubs in the United States.

PAR 9. That with each of the various sportsmen and sportsmen's clubs who leased "Ideal Leggett" traps from respondent, for use, respondent has made and respondent is still making agreements, a part of which is as follows, as to the "Ideal Leggett" trap named therein:

That it [lessee] will not throw or allow any targets to be thrown from said trap other than targets manufactured by the first party and branded "Blue Rock Pigeons."

That a breach of this covenant shall work a forfeiture of the said license, and thereupon the first party may take possession of said trap wherever it can be found and at any time after such breach.

PAR. 10. That respondent, since it first began the manufacture and lease of its "Ideal Leggett" traps, has at all times insisted on the observance of the conditions and restrictions contained in its said "contracts" or "lease agreements" with sportsmen and sportsmen's clubs leasing "Ideal Leggett" traps from respondent, and the vast majority of all sportsmen and sportsmen's clubs leasing "Ideal Leggett" traps from respondent have observed and have not violated the conditions and restrictions contained in the said "contracts" or "lease agreements" and in particular the vast majority of all sportsmen and sportsmen's clubs leasing "Ideal Leggett" traps from respondent have not thrown or allowed to be thrown from "Ideal Leggett" traps clay-pigeon targets other than those of respondent's manufacture.

PAR. 11. That prior to October 15, 1914, respondent was, and since last-mentioned date respondent was, and now is, leasing "Ideal Leggett" traps on a yearly rental basis or price charged therefor, so low that respondent could not at a profit lease said "Ideal Leggett" traps at said rental fee or price charged therefor unless the lessees of said "Ideal Leggett" traps purchased all clay-pigeon targets used in connection with or thrown from said "Ideal Leggett" traps from respondent.

PAR. 12. That for the year 1915 respondent sold approximately 8,377,000, or 30.1 per cent, more clay-pigeon targets than did all its competitors; that for the year 1916 respondent sold approximately 3,088,700, or 12.6 per cent, more clay-

pigeon targets than did all its competitors; that for the year 1917 respondent sold, not including its sales to the Government, approximately 3,477,750, or 22.3 per cent, more clay-pigeon targets than did all its competitors; and that for said year respondent sold, including its sales to the Government, approximately 8,147,750, or 40.2 per cent, more clay-pigeon targets than did all its competitors; that for the year 1918 respondent sold, not including its sales to the Government, approximately 3,209,420, or 29.2 per cent, more clay-pigeon targets than did all its competitors; and that during said year respondent sold, including its sales to the Government, approximately 11,693,420, or 60.1 per cent, more clay-pigeon targets than did all its competitors; that for the first eight months of the year 1919 respondent sold, not including its sales to the Government, approximately 297,090, or 2.4 per cent, more clay-pigeon targets than did all its competitors, and that for the first eight months of said year respondent sold, including its sales to the Government, approximately 4,797,090, or 28.6 per cent, more clay-pigeon targets than did all its competitors; that for the period January 1, 1915, to September 1, 1919, respondent sold, not including its sales to the Government, approximately 18,449,960, or 20.2 per cent, more clay-pigeon targets than did all its competitors, and for the same period of time respondent sold, including its sales to the Government, approximately 36,103,960, or 33.2 per cent, more clay-pigeon targets than did all its competitors.

PAR. 13. That the conditions and restrictions imposed by respondent in the lease of its "Ideal Leggett" traps or respondent's plan or system of marketing its "Ideal Leggett" traps herein, found to be used by respondent,

(*a*) Have compelled and do compel lessees and users of such "Ideal Leggett" traps to purchase exclusively from respondent all clay-pigeon targets thrown from said "Ideal Leggett" traps, and that satisfactory clay-pigeon targets of competitors could be purchased and can now be purchased by said lessees or users of "Ideal Leggett" traps at a price not higher than the price charged by respondent for its clay-pigeon targets.

(*b*) Have prevented and do prevent competing manufacturers of clay-pigeon targets from selling their clay-pigeon

targets for use on or to be thrown from "Ideal Leggett" traps manufactured and leased by respondent.

(*c*) Have prevented and do prevent jobbers and dealers from handling and selling clay-pigeon targets of competitors of respondent and in particular have prevented and do prevent jobbers and dealers from handling and selling clay-pigeon targets of competitors, for use on or to be thrown from respondent's "Ideal Leggett" traps.

CONCLUSIONS.

(1) That—

(*a*) The lease by respondent of "Ideal Leggett" traps upon conditions as set forth in the lease agreement or contract agreement herein found to be used by respondent, under the plan or system of marketing herein described and found to be used by respondent, constitutes a lease upon condition, agreement, or understanding that the lessee and user of "Ideal Leggett" traps, shall not use, in operating said "Ideal Leggett" traps, so leased from respondent, any clay-pigeon targets of a competitor or competitors, and

(*b*) That the effect of the condition, agreement, and understanding is such that it has substantially lessened, and does and may substantially lessen, competition in interstate commerce, in clay-pigeon targets.

(2) That the lease by respondent, of its "Ideal Leggett" traps, upon the condition, agreement, or understanding, herein found to be used by the respondent, and the plan or system of marketing said "Ideal Leggett" traps and clay-pigeon targets by respondent herein described, is in violation 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, and the effect thereof has been, is, and may be, to substantially lessen competition and tend to create a monopoly in interstate commerce.

(3) That the methods of competition set forth in the foregoing report and findings and each and all of said report and findings are under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Con-

gress 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 duly issued and served upon the above-named respondent, the Chamberlin Cartridge & Target Co., its complaint herein, and the said respondent, the Chamberlin Cartridge & Target Co., having filed its answer admitting certain of the allegations of the complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having offered testimony in its behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and facts in said proceeding, and the Commission having made and filed its report and findings as to the facts and conclusions that the respondent has violated section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and 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," which report is herein adopted as part hereof, as fully as if the same were set forth at large herein: Now, therefore,

It is ordered, That the respondent, the Chamberlin Cartridge & Target Co., cease and desist from directly or indirectly making any lease of its "Ideal Leggett" traps or fixing a price charged therefor on the condition, agreement, or understanding that the lessee is to throw from said "Ideal Leggett" traps only clay-pigeon targets of respondent's manufacture and will not throw or allow any target to be thrown from "Ideal Leggett" traps other than clay-pigeon targets manufactured by respondent and from requiring that the lessee shall not throw from said "Ideal Leggett" traps clay-pigeon targets of a competitor or competitors of respondent and from requiring the performance by the lessee of the conditions, agreements, or understandings on which such leases have been heretofore made.

Provided, That respondent, the Chamberlin Cartridge & Target Co., is hereby granted not to exceed 60 days from the date of the service hereof, within which to readjust and make such changes in its methods of leasing and marketing said "Ideal Leggett" traps as will make its conduct and practices in that behalf conform to the requirements of this order.

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

FEDERAL TRADE COMMISSION

v.

FRUIT GROWERS' EXPRESS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 271—May 7, 1920.

SYLLABUS.

Where a corporation engaged in leasing to various railroads refrigerator cars used in the transportation of fresh fruits and vegetables, and in furnishing ice, repairs, and other services in connection with such leasing, doing 95 per cent of such business on certain railroads until taken over by the Government, and doing all the business in the territory served by such railroads in a number of the Southern States—

Operated under contracts entered into by its assignor according to the terms of which contracts the lessee obligated itself to use said corporation's "equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by the railroad during the life of this contract":

Held, That the effect of such leases, under the circumstances set forth, might be to substantially lessen competition and tend to create a monopoly in the transportation of fresh fruits and vegetables under refrigeration in the territories served by the railroads involved, and that the use of the same constituted a violation of section 3 of the act of October 15, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Fruit Growers' Express, hereinafter referred to as respondent, has violated and is 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," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Fruit Growers' Express, is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at the city of Chicago, State of Illinois, and extensively engaged in the business of leasing to various railroad companies, refrigerator cars used in the transportation of fresh fruits and vegetables, in commerce through and among the several States of the United States and the Territories thereof, and the District of Columbia. That among the railroads to which such cars are leased are: Atlantic Coast Line, Seaboard Air Line, Florida East Coast, Charlotte Harbor & Northern, Aberdeen & Rockfish, Baltimore, Chesapeake & Atlantic, New York, Philadelphia & Norfolk.

PAR. 2. That the leasing contracts entered into by respondent, with the various railroads for the use of refrigerator cars as aforesaid, contain the following clause:

> The railroad shall use the car line's equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by the railroad during the life of this contract.

That said clause is inserted in said contracts by respondent with the purpose and intent of substantially lessening competition in the interstate transportation of fresh fruits and vegetables and the creation of a monopoly in such transportation, and the effect of such contracts has been and is to prevent other and competing car lines from competing

in the interstate service of the transportation of fresh fruits and vegetables under refrigeration in carloads, in the several States reached by the lines of said railroad companies, and to prevent shippers who own their own refrigerator cars from transporting fresh fruits and vegetables in such cars over the lines of railway owned or operated by said railroad companies, and has enabled the respondent to acquire a complete monopoly in the transportation of such commodities over such lines of railway.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that the above-named respondent, Fruit Growers' Express, had been and was 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," commonly known as the Clayton Act; and the respondent having filed its answer to said complaint, and the issues so raised having pursuant to due notice given said respondent come on for a hearing before the Commission; and the Commission having appeared therein and introduced its evidence in support of its charges, and the respondent having appeared and introduced testimony in support of its answer; and all testimony so taken at said hearing having been reduced to writing and together with all other evidence introduced at said hearing having been filed in the office of the Commission, and the Commission being fully advised in the premises, upon consideration thereof, now makes this its report and findings as to the facts and its conclusions thereon:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Fruit Growers' Express, is now and was at all of the times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware,

having its principal office in the city of Chicago, in the State of Illinois, and is now and for more than one year last past has been extensively engaged in the business of leasing to railroad companies refrigerator cars used in the transportation of fresh fruits and vegetables in commerce through and among the several States of the United States and Territories thereof and the District of Columbia. That among the railroads to which said cars are leased are the following:
Atlantic Coast Line, Seaboard Air Line, Florida East Coast, Charlotte Harbor & Northern, Aberdeen & Rockfish, Baltimore, Philadelphia & Norfolk.

PAR. 2. That respondent furnishes to each of the several railroads mentioned in paragraph 1 hereof, refrigerator cars for the transportation of fruits and vegetables and similar products under refrigeration, in carloads pursuant to the terms of a written contract entered into by the Armour Car Lines with said several railroads, which provides, among other things:

> The railroad shall use the car line's equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by the railroad during the life of this contract.

PAR. 3. That each of said contracts was originally entered into with each of said railroad companies by Armour Car Lines, and respondent became a party to such contracts on November 5, 1914, by assignment from Armour Car Lines, of all its right, title, and interest in said contracts, which said assignments were accepted by respondent in writing, and formal consent given thereto by each of said railroad companies, in writing.

PAR. 4. That by the terms of said contracts so entered into with each of said railroad companies respondent agreed to furnish, and does furnish and supply, each of said railroad companies a sufficient number of refrigerator cars for the transportation of all fruits and vegetables and similar products which are tendered to said several railroad companies by shippers at stations on the respective lines owned or operated by said railroad companies, for transportation under refrigeration to the markets of the United States.

PAR. 5. That by the terms of said contracts respondent agreed to furnish and put into said cars all the ice necessary for the suitable and proper refrigeration of said cars, for the preservation of fruits and vegetables and similar products contained in the same, and ices and reices the same while in transit and keeps the same iced and cared for so as to insure safety and protection to said products and the preservation thereof while in transit.

PAR. 6. That in the performance of the terms of said contracts, each of said several railroad companies agrees to collect, and does collect, and pay to respondent at the end of each month all moneys earned by respondent for refrigeration, and handling under its supervision the business moving from its rails during the preceding month, at rates named by respondent, not exceeding the maximum provided for in said contracts, and also pays to respondent for the use of its refrigerator cars three-fourths of 1 cent per mile run on the lines of its railroad, both loaded and empty.

PAR. 7. That in the performance of the terms of its contracts with said several lines of railroad, respondent's refrigerator cars, both loaded and empty, are moved from one State to another, and said cars when loaded move generally from, into, and through the States of Florida, Georgia, Alabama, South Carolina, North Carolina, Virginia, the District of Columbia, Maryland, Delaware, Pennsylvania, New Jersey, and New York.

PAR. 8. That the said several lines of railroads referred to in paragraph 1 hereof, are located in, and at the times mentioned herein served, and still serve, one or more of the following States: Florida, Georgia, Alabama, South Carolina, North Carolina, Virginia and District of Columbia.

PAR. 9. That prior to the taking over of said railroads by the United States Government, by reason of the contracts hereinbefore mentioned, at least 95 per cent of all of the fruits and vegetables and similar products originating on the lines of the railroads mentioned in paragraph 1 hereof was handled by respondent by means of its refrigerator cars.

PAR. 10. That in the territories served by said railroads, comprising the States of Florida, Georgia, and part of Ala-

bama, North Carolina, South Carolina, and Virginia, respondent is the only refrigerator car company furnishing refrigerator cars for the transportation of fruits and vegetables under refrigeration.

PAR. 11. That in the discharge of its obligation under said contracts with said several lines of railroad, respondent before the shipping season opens ascertains as near as may be what the requirements of each station in the territory served by said railroads will be; when the crops will move, and their general condition. Upon such information respondent arranges for a sufficient ice supply to be stored in advance, to protect the crop when it moves, and a sufficient number of refrigerator cars to handle the business are assembled at convenient points in such territory in advance of the actual crop movement.

PAR. 12. That respondent furnishes to each of the several railroads mentioned in paragraph 1 hereof, for the shippers, cars as ordered by the railroad. Such cars before delivery to the railroad are repaired, if the physical condition of cars demands repairs, cleaned, and filled with approximately 5 tons of ice to each car. After the car is loaded it is reiced in loading territory and at other points in transit, under the supervision of respondent.

PAR. 13. That the transportation of fruits and vegetables and other similar products, under refrigeration, from the territory comprising the States of Florida, Georgia, Alabama, South Carolina, North Carolina, and Virginia, commenced about 1894, at which time the railroads operating in such territory were furnished refrigerator cars for the transportation of said fruits and vegetables by Armour Car Lines, the California Fruit & Vegetable Co., the McArthur Refrigerator Co., and possible others.

PAR. 14. That Armour Car Lines commenced securing exclusive contracts for furnishing refrigerator cars and refrigeration service with the several railroads operating in the States mentioned in paragraph 13 hereof for the transportation of fruits and vegetables under refrigeration, in 1901, beginning with the Atlantic Coast Line, or the Sea-

board Air Line, and continued gradually to secure such exclusive contracts until about 1903 when Armour Car Lines had secured all of the business of furnishing refrigerator cars and refrigeration service to the railroads operating in said territory for the transportation of fruits and vegetables and similar products under refrigeration.

PAR. 15. That respondent enters into no contractual relation with shippers of fruits and vegetables for the transportation thereof under refrigeration or otherwise. Its sole business is furnishing the several railroads with which it has such contracts refrigerator cars for the shipment of fruits and vegetables and other similar products under refrigeration, and furnishing refrigeration for such fruits and vegetables while the same are loading and in transit.

CONCLUSIONS.

That the contracts entered into by respondent with the several railroad companies mentioned in the findings as to the facts hereof for the furnishing of refrigerator cars and refrigeration service are made on the condition, agreement, and understanding that each of said railroad companies shall use respondent's refrigerator cars exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railroads owned or operated by each of said railroad companies during the life of each of said contracts and shall not use the equipment of a competitor of respondent for the purpose mentioned in said contract; and the effect of such condition, agreement, and understanding may be to substantially lessen competition and tend to create a monopoly in the transportation of fresh fruits and vegetables under refrigeration in the territory served by the several lines of railroad mentioned in paragraph 1 of the findings as to the facts hereof; and that the use of such contracts is 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein upon the above-named respondent, Fruit Growers' Express, and the respondent having entered its appearance by Charles J. Faulkner, Jr., and H. K. Crafts, its attorneys, and having filed its answer admitting certain of the allegations of the complaint and denying others thereof, and the Commission having offered testimony in support of its complaint, and the respondent having offered testimony in support of its answer; and the attorneys for the Commission and for the respondent having submitted briefs as to the law and facts in this proceeding, and the Commission having made and filed its report and findings as to the facts and conclusions that the respondent has violated 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," which report is herein adopted as part hereof as fully as if the same were set forth at large herein: Now, therefore,

It is ordered, That the respondent, Fruit Growers' Express, its officers, servants, and agents cease and desist from directly or indirectly making any lease for the use of its refrigerator cars for the transportation of fruits and vegetables and similar products under refrigeration with any railroad company on the condition, agreement, or understanding that said railroad company shall use the respondent's equipment exclusively in the movement of fruits and vegetables under refrigeration in carloads from points on the lines of railway owned or operated by it; or that said railroad company shall not use the equipment of a competitor of respondent for like purposes; and from requiring the performance by the lessee of such refrigerator cars of the conditions, agreements, or understandings on which such leases have been heretofore made.

Provided, That respondent, Fruit Growers' Express, is hereby granted not to exceed 60 days from the date of service hereof within which to readjust and make such changes in the methods of leasing its refrigerator cars to the several

railroad companies mentioned in the complaint herein as will make its conduct and practices in that behalf conform to the requirements of this order.

And respondent is further ordered to file a report in writing with the Commission within three months from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

JOSEPH L. BERK AND LEON G. BERK, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BERK BROS.

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

Docket 561—May 13, 1920.

SYLLABUS.

Where a firm engaged in the sale of fountain pens printed upon the outside of the containers, "The Standard Self Filling Fountain Pen, $1.50," the fact being that such fountain pens were never sold for more than 25 cents, and that the retail price was not, nor was intended to be, more than 25 cents; with the result that the trade and the purchasing public were thereby misled:

Held, That such false and misleading labeling, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., hereinafter referred to as the respondents, have been 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, 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, Joseph L. Berk and Leon G. Berk, are copartners doing business under the firm name and style of Berk Bros., with their principal office and place of business located in the city and State of New York, now and at all times hereinafter mentioned engaged in the business of selling fountain pens throughout various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of their business aforesaid, respondents sell and transport fountain pens to customers in different States of the United States, causing the same to pass through and into various States of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce in such fountain pens between and among different States of the United States.

PAR. 3. That within the two years last past the respondents have sold in commerce aforesaid fountain pens in boxes or containers upon the outside of which was printed or stamped the words "The Standard Self-Filling Fountain Pen $1.50"; that such fountain pens were never sold for more than 25 cents and the effect of such printing or stamping has been and is to mislead purchasers, the trade, and the general public into the belief that the retail price of such fountain pens is $1.50, when in truth and in fact it is never more than 25 cents.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., 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 by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., having filed their answer, admitting that all the allegations of said complaint and each count and paragraph thereof are true in the manner and form therein set forth, and consenting and agreeing that the Federal Trade Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its conclusion, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument:

Therefore, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Joseph L. Berk and Leon G. Berk are copartners, doing business under the firm name and style of Berk Bros., with their principal office and place of business located in the city and State of New York, now, and at all times hereinafter mentioned, engaged in the business of selling fountain pens throughout the various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of their business aforesaid, respondents sell and transport fountain pens to customers in different States of the United States, causing the same to pass through and into various States of the United States, and there is and has been at all times hereinafter mentioned a constant current of trade and commerce in such fountain pens between and among the different States of the United States.

PAR. 3. That for more than one year last past the respondents have sold in commerce aforesaid fountain pens in boxes or containers upon the outside of which was printed or stamped the words "The Standard Self-Filling Fountain Pen, $1.50"; that such fountain pens were never sold for

more than 25 cents, and the retail price of such fountain pens is not and is not intended to be more than 25 cents; that the effect of such printing or stamping on the boxes or containers in which the fountain pen is sold to the public has been and is to mislead purchasers, the trade, and the general public into the belief that the retail price of such fountan pen is $1.50, when in truth and in fact, it is never more than and is not intended to be more than 25 cents.

PAR. 4. That the effect of the acts and practices in the manner and form above mentioned and set forth may be to hinder, harass, and embarrass competitors of the respondents in the conduct of their business.

CONCLUSION.

That the method of competition set forth in the foregoing findings of facts in paragraph 3 is under the circumstances therein set forth an unfair method of competition in interstate commerce in violation of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., having filed their answer, in which they consented and agreed that the Federal Trade Commission shall proceed forthwith upon the same, and make and enter its report stating its findings as to the facts, its conclusions and its order, without the introduction of testimony and waiving any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report, stating its findings as to the facts and its conclusion, that the 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 herein referred to and made a part hereof: Now,

It is ordered, That the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., their agents, representatives, servants, and employees cease and desist from directly or indirectly:

Stamping, printing, or otherwise marking on boxes or containers in which fountain pens are sold, a fictitious and misleading price, known to be in excess of the price at which such pens are usually sold at retail.

It is further ordered, That the respondents, Joseph L. Berk and Leon G. Berk, doing business under the firm name and style of Berk Bros., shall within 60 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.

W. G. HANSON, DOING BUSINESS UNDER THE NAME AND STYLE OF THE MERCANTILE & FINANCIAL TIMES PUBLISHING CO.

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

Docket 502.—May 20, 1920.

SYLLABUS.

Where an individual engaged in the printing and sale of a publication never offered to the public generally nor sent through the mails, but purporting to be a regular mercantile and financial periodical; with the purpose of misleading the public as to the true character of said publication;

Closely simulated the appearance of a regular mercantile and financial periodical, by the inclusion of a large number of free advertisements of reputable financial concerns, inserted without their knowledge; by the inclusion of matter purporting to be mercantile and financial news articles and editorials, but in fact solicited advertisements constituting the publication's sole source of income, and paid for by the purchase of a definite number of copies of the particular issue; and by make-up and style of printing:

Held, That such false and misleading course of conduct, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that W. G. Hanson, hereinafter referred to as respondent, doing business under the name and style of the Mercantile & Financial Times Publishing Company, has been and 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, W. G. Hanson, has his principal place of business in the city and State of New York, and for more than a year last past has been engaged in printing and publishing what purports to be a periodical journal dealing with mercantile and financial matters generally, as hereinafter more fully described, under the name and style of the "Mercantile and Financial Times," and in the transportation thereof from its place of publication in the city and State of New York to purchasers of copies therof in other States of the United States, in competition with other individuals, copartnerships, and corporations engaged in the publication of periodical journals dealing with mercantile and financial matters generally.

PAR. 2. That the publication issued by the respondent as aforesaid under the name of the "Mercantile and Financial Times" is essentially similar in form and make up to periodical journals dealing with mercantile and financial matters generally which are made up of paid advertisements set forth as such and bona fide news articles and editorials, and contains a large number of advertisements of reputable financial concerns together with what purport to be news

articles and editorials dealing with financial and mercantile matters, and in other ways so closely simulates bona fide periodical journals of this kind as to lead the public generally to believe that respondent's publication is in fact a bona fide periodical journal dealing with mercantile and financial matters generally, whereas in fact respondent's publication is not a bona fide periodical journal published regularly and sent through the mails to subscribers or distributed through dealers in the usual course; that what purport to be news articles and editorials contained therein are in fact advertisements, although not marked as such, of individuals referred to therein and paid for by the said individuals contracting with the respondent to buy a given number of copies of said publication containing such spurious news articles and editorials, and that the aforesaid advertisements of reputable financial concerns are published without the knowledge or consent of said concerns and without any expense on their part; and that the effect of the foregoing is, among other things, to cause advertisers to give an undue preference to respondent's publication over bona fide periodical journals in which all advertising matter is plainly set forth as such for the reason that the public are thereby deceived and misled into giving an undue credence to advertisements falsely represented and published as news articles and editorials as aforesaid.

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 respondent has been and is now 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 has been for more than a year last past engaged in printing and publishing what purports to be a periodical journal dealing with mercantile and financial matters generally, under the name and style of

the "Mercantile and Financial Times," and in the transportation thereof from its place of business in New York City, in the State of New York, to purchasers of copies thereof in other States of the United States, in competition with other individuals, copartnerships, and corporations engaged in the publication of periodical journals dealing with mercantile and financial matters generally. That said Mercantile and Financial Times is made up of what purports to be editorial and news articles and contains a large number of advertisements of reputable financial concerns, and that many of said news articles and editorials are in fact advertisements and paid for as such, and such purported advertisements are not in fact paid for but are copied from other publications without the knowledge and consent of such publications and without the knowledge or consent of the advertisers; and that a proceeding by the Federal Trade Commission in respect to such charges would be to the interest of the public, and fully stating its charges in this respect, and the respondent having appeared in his own proper person and having filed his answer to the complaint of the Commission herein, and the Commission having offered testimony in support of the charges of said complaint and the respondent having offered testimony in support of his answer, and the respondent and counsel for the Commission having waived the filing of briefs and the hearing of argument on the exceptions and on the merits, 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 the conclusions of law.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. For more than three years last past the respondent, W. G. Hanson, has been engaged in publishing, and has published, a paper called the "Mercantile and Financial Times," purporting to be devoted to the financial and mercantile interests in the United States, which paper was published at 409 and 416 Pearl Street, in the city of New York, State of New York.

PAR. 2. That said paper, the Mercantile and Financial Times, had no subscribers and did not solicit advertisements and was not distributed through the post office. That in size it averaged about 15 pages, consisting of reading matter having the form and appearance of editorial and news items and contained advertisements which purported to be the advertisements of reputable financial business houses.

PAR. 3. That said Mercantile and Financial Times is and was distributed to purchasers of copies thereof in States other than the State of New York and within the field reached and served by other persons and corporations engaged in the publication of periodical journals dealing with mercantile and financial matters generally, and selling advertising space at regular rates to such persons as desired to use such periodical journals for advertising purposes.

PAR. 4. That the Mercantile and Financial Times as published by respondent is similar in form and appearance to such regular periodical journals dealing with financial matters generally, and which are made up of paid advertisements set forth as such and bona fide news articles and editorials.

PAR. 5. That the advertisements appearing in said Mercantile and Financial Times were copied from other publications and appeared in said Mercantile and Financial Times without the knowledge or consent of the advertisers and without the knowledge or consent of the publications from which said advertisements were copied, except as hereinafter set forth in paragraph 6. The Mercantile and Financial Times received no compensation for such advertisements and such advertisements were placed in said Mercantile and Financial Times for the purpose of making it appear to the public that mercantile and financial houses of good repute made use of its columns for advertising purposes and to give to the Mercantile and Financial Times the appearance of a regular publication.

PAR. 6. That said Mercantile and Financial Times as published contains many articles in the form of editorials and news articles which are in fact paid "write-ups" for which

the person or corporation so given publicity contracted to purchase a definite number of copies of the issue of said Mercantile and Financial Times in which such "write-ups" appeared, paying therefor at the rate of 15 cents per copy in quantities less than 1,000 and 10 cents per copy for greater quantities.

PAR. 7. That said Mercantile and Financial Times is sold in States other than the State of New York to persons who have purchased a definite number of copies in return for the insertion in the whole issue of such paper of such "write-ups" and is delivered to such purchasers within the city of New York by messengers and to purchasers without the city of New York by means of the several express companies.

PAR. 8. The Mercantile and Financial Times is not offered for sale to the public and its sole income is derived from the sale of copies of the paper to the persons and corporations so written up. That such "write-ups" are solicited by agents of the respondent who write the articles and submit them to the prospective purchaser for correction and revision. If the person or corporation so written up agrees to purchase in return for such "write-ups" a definite number of copies of the Mercantile and Financial Times, the article is printed and published as revised.

PAR. 9. The Mercantile and Financial Times is published only when a sufficient number of paid "write ups" has been secured on contract similar to the contracts mentioned in No. 8 hereof, to make an issue of said periodical profitable.

PAR. 10. The persons and corporations given the publicity mentioned in No. 8 hereof distributed the copies of the Mercantile and Financial Times so purchased by them through the mails to prospective stock purchasers and investors.

PAR. 11. That the Mercantile and Financial Times, as printed and published by respondent, was so made and printed as to simulate closely regular periodical journals devoted to financial and mercantile matters, and designed to mislead the public into the belief that it was a regular publication.

CONCLUSIONS.

That the method of competition as set forth in the foregoing findings as to the facts under the circumstances therein set forth is an unfair method 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 and the respondent having duly filed his answer admitting certain allegations of said complaint and denying certain other allegations thereof and particularly denying that respondent has ever violated the provisions of an act of Congress mentioned in said complaint, or any of the other provisions of any law; and the Commission having offered testimony in support of the charges of said complaint and the respondent having offered testimony in support of his answer and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, W. G. Hanson, doing business under the name and style of the Mercantile & Financial Times Publishing Co., his agents, servants, and any and all persons acting for him, cease and desist from printing, publishing, and distributing among the several States and Territores of the United States and the District of Columbia and foreign countries, any periodical journal or other publication having the form and appearance of a regular newspaper or periodical journal and containing printed matter in the form of news items or editorials, not labeled or otherwise designated as advertisements, which are in fact paid adver-

tisements, all so made up and published as to mislead the public into the belief that it was a regular publication.

Provided, That the said respondent be, and hereby is, granted 30 days from the date of service of this order within which to adjust his business so as to conform to the terms of this order.

It is further ordered, That within the time above limited within which respondent may adjust his business to conform to this order he report to the Commission the manner in which he has complied with this order and conformed thereto.

FEDERAL TRADE COMMISSION

v.

JOHN F. DRAUGHON, DOING BUSINESS UNDER THE NAME OF DRAUGHON TEXT BOOK CO.

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

Docket 511—May 20, 1920.

SYLLABUS.

Where a concern engaged in the publication and sale of textbooks, charts, lesson sheets, etc., for use in teaching bookkeeping, shorthand, typewriting, business English, business arithmetic, and other studies in business colleges, and in home-study courses; with a tendency to mislead and deceive the public,

(*a*) distributed circulars entitled "Government Reports on Pitmanic and Gregg Shorthand writers" which represented (1) that certain statistics respecting the percentage of shorthand writers using the Pitmanic-Graham system emanated from the Government, whereas they were compiled by private institutions, (2) that a recent Government report showed that approximately 77 per cent of the stenographers in the Federal service were writers of Pitmanic shorthand, whereas the statistics used were six years old, (3) that a Government report showed that of 886 United States official court reporters 807 wrote the Pitmanic system of shorthand, whereas no such statement had appeared in any Government publication, (4) that the Government recognised the Pitmanic as the only standard system, whereas the Government has never expressed any preference for any one shorthand system, and (5) that a Government report showed that 91.2 per cent of all leading court and

Congressional shorthand reporters of the United States wrote Pitmanic shorthand, whereas the report quoted from was in no sense a Government document;

(*b*) used substantially the same statements contained in the foregoing paragraph in display advertisements in a newspaper having interstate circulation;

(*c*) distributed advertising matter containing statements (1) that the Supreme Court had decided that the concern's bookkeeping course was the best, the statement being followed by certain explanatory matter which nevertheless did not deprive it of its misleading character; (2) that its "Civil Service Bookkeeping Set was drafted by the Government," such statement being without foundation of fact; (3) that 85 per cent of the stenographers in the Government service wrote the system of shorthand taught by schools which teach the concern's courses; (4) that 85 per cent of the Government official court reporters holding positions paying $5,000 or more a year wrote the concern's system of short hand, whereas the United States court reporters do not receive the large salaries indicated:

Held, That such false and misleading advertising under the circumstances set forth constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that John F. Draughon, doing business under the name of Draughon Text Book Co., hereinafter referred to as the respondent, has been and 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 is now, and for more than two years last past has been, engaged in the business of publishing and selling text books, charts, lesson sheets, etc., whereby bookkeeping, shorthand, typewriting, business English, business arithmetic, and other studies are taught in business colleges and in home study courses to students residing

in the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries. That respondent's principal place of business is in Nashville, in the State of Tennessee, and respondent causes said textbooks, charts, lessen sheets, etc., to be transported from the State of Tennessee through and into various other States of the United States, the Territories thereof, the District of Columbia, and foreign countries, for use in various business colleges supplied by respondent and for use by respondent's enrolled students taking the home study courses. In carrying on such business, respondent has been in direct competition with various other individuals, partnerships, and corporations similarly situated.

PAR. 2. That said respondent in the course of his business, as stated in paragraph 1 hereof, has made use of certain false and misleading statements contained in advertising matter circulated by him, and has sought by such means to disparage the business of his competitors. That respondent within the year last past has distributed circulars designated "Bulletin 2654," which circulars were entitled "Government Reports on Pitmanic and Gregg Shorthand Writers," which circulars did not contain the report of any Federal Government official, nor the report of any State government official, except that use was made of some statistics taken from reports of the United States Commissioner of Education for the years 1911 and 1913, but the main portion of said circular was made up of the unofficial comment of respondent, in which he sought to depict the claimed advantages of the Pitmanic system of shorthand over those of the Gregg and other systems of shorthand. Said circulars also contained the false and misleading statement that of the 886 official court reporters of the United States Government 807 write Pitmanic systems; and the further false and misleading statement is made that the Government recognizes the Pitmanic system as the only standard shorthand system. Substantially the same false and misleading statements were contained in a display advertisement published on March 18, 1919, by respondent in the Nashville Banner, a newspaper of general circulation. Respondent also published and distributed in the various

States of the United States, in the year last past, a folder entitled "Reasons," which also contained numerous false and misleading statements concerning his own business and that of his competitors, among which statements was one to the effect that "The Supreme Court" has decided that the Draughon bookkeeping course was the best; and further statement is made to the effect that the Federal Government had drafted Draughon's civil service bookkeeping set and that 85 per cent of the stenographers employed by the Federal Government used the shorthand system taught in the Draughon schools. That various other advertising circulars were distributed by respondent containing false and misleading statements as stated above, all of which have had the effect of creating the false impression that the course of study used by the respondent was the only standard course in use and had been so recognized by the United States Government, all of which has prejudiced the competitors of respondent and disparaged the business of such competitors.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having reason to believe that the above-named respondent, John F. Draughon, doing business under the name of Draughon Textbook Co., has been for more than a year last past 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 that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered his appearance by his attorney, duly authorized and empowered to act in the premises, and having filed his answer admitting certain of the matters alleged in the complaint herein and denying others thereof; and thereafter having made and executed an agreed statement of facts which has been filed in this said cause, in which agreed statement of facts it is stipulated and agreed that the Federal Trade Commission shall

take such agreed statement of facts as evidence in this case and in lieu of testimony; and final disposition of said cause having been made by formal hearing of the same before the Federal Trade Commission on April 12, 1920, due and legal notice thereof being given respondent, receipt whereof is acknowledged by respondent's attorney, as will more fully appear by the files and records of this cause; therefore, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is now and for more than two years last past has been engaged in the business of publishing and selling textbooks, charts, lesson sheets, etc., whereby bookkeeping, shorthand, typewriting, business English, business arithmetic, and other studies are taught in business colleges and in home-study courses to students residing in various States of the United States and Territories thereof, the District of Columbia and foreign countries. That respondent's principal place of business is in Nashville, in the State of Tennessee, and that respondent causes said textbooks, charts, lesson sheets, etc., to be transported from the State of Tennessee, through and into the various other States of the United States, the Territories thereof, the District of Columbia, and foreign countries for use in various business colleges supplied by respondent and for use by resepondent's enrolled students taking the home-study courses. In carrying on such business, respondent has been in direct competition with various other individuals, copartnerships and corporations similarly situated.

PAR. 2. That respondent in the course of such business as aforesaid, and during the year 1919, published and distributed printed circulars which are designated, "Bulletin 2654," one of which circulars is attached hereto marked "Exhibit A" and made a part hereof, the same as though fully set forth herein. All of such circulars so published and distributed by respondent were identical in form and substance, with the circular marked "Exhibit A." Said

circulars were entitled "Government Reports on Pitmanic and Gregg Shorthand Writers." Said circulars were composed of divers statements, statistics, etc., some of which purport to be reports of official organizations or bodies, together with divers comments thereon by the respondent, all of which statements and comments purport to prove the superiority of the Pitmanic system of shorthand.

In such circulars entitled "Government Reports," appear the following false or misleading statements, to wit:

(1) Statistics are given on page 1, of said circular, which purport to be taken from a report of a "New York High-School Committee," or the "Shorthand Section, High-School Teachers' Association." This association was and is a private organization composed of individual high-school teachers, and was and is not a public organization or governmental agency. Its report was not a Government report.

(2) Statement is made on page 2 of such circular, under the caption "A Government Report," which reads as follows:

> The following late official report (vol. 2, p. 568) of the United States Commissioner of Education, shows that out of a total of 2,444 stenographers employed in the departmental offices in Washington, 1,890 (77.3 per cent) are writers of the Pitmanic system of shorthand, and only 554 are writers of all other systems combined.

Said statement was taken from statistics given in the Commissioner of Education's report for the year 1913, and such statistics were at least six years old at the time of the issuance of said circulars.

(3) Statement is made on pages 2 and 3 of said circulars, under the caption "Another Government report," as follows:

> Of the 886 official court reporters of the United States Government, 807 write the Pitmanic system.

This statement is false and is not contained in any report of any United States governmental department, branch, or agency, or in any State governmental department, branch, or agency.

(4) Statement is made upon pages 3 and 4 of said circular as follows:

> The Government's preference [in regard to shorthand systems] was indicated, expressed in the fact that on certain blanks which the Government furnished to applicants for positions as teachers of shorthand in schools conducted by the Government—blanks which applicants were required to fill out—there was a printed statement in substance as follows: "*No one need apply unless he or she teaches a Pitmanic system.*" Doesn't this mean that the Government recognizes the Pitmanic system as the only standard shorthand system? Sure!

The United States governmental departments and the United States Civil Service Commission have never expressed a preference for any one shorthand system over any other.

(5) Statement is made upon page 4 of said circular, under the caption "Still another report" (i. e., a Government report), that—

> "A late official report of the National Shorthand Reporters' Association shows" that 91.2 per cent of "all the leading court and congressional shorthand reporters of the United States" write Pitman shorthand.

The National Shorthand Reporters' Association was and is a private organization, and such report was not a Government report.

PAR. 3. That respondent in the course of such business as aforesaid issued and published on or about March 18, 1919, substantially the same statements as contained in the "Bulletin 2654" in a large display advertisement in the Nashville Banner, a newspaper of interstate circulation published in Nashville, Tenn.

PAR. 4. That respondent in the course of such business as aforesaid and during the year 1919 published and distributed printed folders entitled "Reasons," one of which folders is attached hereto, marked "Exhibit B" and made a part hereof the same as if fully set forth herein. All of such folders so published and distributed by respondent were identical in form and substance with the folder marked "Exhibit B." In such folders appear the following false or misleading statements, to wit:

(1) Statement is made on the inside front cover of said folder under the caption, "Here is the evidence," as follows:

> The Supreme Court has decided that the Draughon Bookkeeping Course—the course which we teach—is *the best*. To the decision of the Supreme Court on a question of law all other courts and the people must assent, for nobody is likely to know the law better than the eminent men who compose the Supreme Court.

This statement is false, because there is no decision or decree or finding of the Supreme Court of the United States, or of any State, in any judicial proceeding whatsoever, that the Draughon bookkeeping course is the best bookkeeping course, or in any otherwise declaratory of the merits or demerits of the Draughon bookkeeping course. Respondent then goes on with the following statement:

> And is anybody more competent to judge as to the superiority of a bookkeeping course than practical bookkeepers, merchants, and bankers? These men constitute the supreme court in the business world. Hence, by analogy we can say that the *supreme court* has decided that the Draughon bookkeeping course—the course which we teach—*is the best*.

Such further statement, by which respondent attempts to qualify the preceding statement, does not nullify the false and misleading impression of such preceding statement and the whole tended to deceive and mislead the public.

(2) Reference is made on page 3 of said folder to the respondent's "Civil Service Bookkeeping Set, drafted by the Government." This "Civil Service Bookkeeping Set," a true copy of which is annexed hereto and marked "Exhibit C" and made a part hereof, the same as if fully set forth herein, and which was and is used by respondent in the aforesaid business, consisted of entries and problems taken from specimen entries issued by the United States Civil Service Commission supplemented by comments and instructions drafted by the respondent.

(3) On page 24 of said folder is a picture representing the conventional figure of "Uncle Sam"—that is, the

United States—and on page 25 of said folder appears the following statement:

> Uncle Sam says: * * * "I drafted the Draughon civil service bookkeeping set and 85 per cent of my *stenographers* write the shorthand system taught by the schools which teach the Draughon business training courses."

Such statements were false, because the Draughon civil-service bookkeeping set was not drafted by the United States Civil Service Commission, nor by any other branch of the United States Government, but was drafted by respondent as aforesaid, and 85 per cent of the Government stenographers do not, and did not then, write a shorthand system taught by schools which teach the Draughon "business training courses." The United States Civil Service Commission objected to the said statements, and by letters of June 20, 1919, and July 25, 1919, requested the respondent to discontinue the circulation of such folder with said statements.

(4) Statement is made on page 40 of said folder that "about 85 per cent of the Government's official court reporters, the Government stenographers who draw the *big salaries*, who hold positions paying $5,000 or more a year, write the Graham-Pitman system of shorthand, *the system which we teach.*" It is not a fact that the official stenographer for any United States court receives a salary of $5,000 or more per year, and such statement is false and misleading.

PAR. 5. All of the foregoing statements, so published and distributed in interstate and foreign commerce by means of the aforesaid circulars, folders, and advertisements, were either false, or misleading, or both, as heretofore shown; and all of them tended to mislead and deceive the public, and to hinder and embarrass respondent's competitors.

CONCLUSIONS.

From the foregoing findings the Commission concludes that the methods of competition set forth are under the circumstances set forth 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; and the respondent, John F. Draughon, doing business under the name of Draughon Text Book Co., having entered his appearance by his attorney, Will H. Krause, Esq., duly authorized and empowered to act in the premises; and having filed his answer; and thereafter having made and executed an agreed statement of facts which has been filed in this said cause, in which statement of facts it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony; and final disposition of said cause having been made by formal hearing of the same before the Federal Trade Commission on April 12, 1920, due and legal notice thereof being given respondent, receipt whereof is acknowledged by his attorney; and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent, John F. Draughon, doing business under the name of Draughon Text Book Co., has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, his agents, servants, and representatives cease and desist from publishing and circulating or causing to be published and circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries advertisements, circulars, folders, letters, or any other printed or written matter whatsoever, wherein it is directly or indirectly stated, set forth, or held out to the public:

(1) That the United States Government or any department, bureau, commission, branch, or agency

thereof has in any matter whatsoever recognized, declared, or reported that the Pitmanic system of shorthand or any other system of shorthand is the best shorthand system or is a better system of shorthand than any other system;

(2) That the Pitmanic system of shorthand or any other system of shorthand has been adopted as the standard system by or for United States Government or by or for any department, bureau, commission, branch, or agency thereof;

(3) That the Supreme Court of the United States or of any of the several States has in any way adjudicated the merits or demerits of the courses of instruction or any of them offered by respondent and employed in his business; or that such court has declared the same to be the best course of such instruction; or declared it to be better than any other course of such instruction;

(4) That the United States Government or any department, bureau, commission, branch, or agency thereof has in any manner whatsoever approved respondent in the conduct of his business or prepared or drafted the Draughon civil service bookkeeping set or any of the lesson sheets, textbooks, or any other publication whatsoever published, distributed, or used by respondent or his agents, servants, or representatives.

It is further ordered, That the respondent make and file with the Commission within 60 days from the date of this order his report, stating in detail the manner and form in which this order has been conformed to: and attach to such report copies of all circulars, letters, and advertising matter published, distributed, or used by him in the conduct of his business subsequent to the date of this order.

FEDERAL TRADE COMMMISSION

v.

C. H. KRONEBERGER AND W. M. KRONEBERGER, PARTNERS, STYLING THEMSELVES C. H. KRONEBERGER & CO.

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

Docket 508.—May 26, 1914.

SYLLABUS.

Where a corporation engaged in the purchase and sale of coffee, tea, sugar, and cocoa leased coffee urns to proprietors of cafes and restaurants in various cities without other consideration than that such proprietors would purchase all or approximately all of their supplies of coffee from said corporation:

Held, That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that C. H. Kroneberger and W. M. Kroneberger, partners, styling themselves C. H. Kroneberger & Co., hereinafter referred to as the respondents, have within the year last past violated and are violating 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," 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 respondents, C. H. Kroneberger and W. M. Kroneberger, partners, styling themselves C. H. Kroneberger & Co., have their principal office and place of business in the city of Baltimore, in the State of Maryland, and are now, and at all times hereinafter mentioned have been, engaged in the business of dealing in coffee and tea, purchasing same in wholesale quantities in the various States of the United States and in foreign countries, causing same

to be transported from points outside the State of Maryland to their place of business in Baltimore, Md., where said commodities are resold by respondents in wholesale quantities in the State of Maryland and States adjacent thereto, and in the District of Columbia, and there is continuously, and has been at all the times herein mentioned, a constant current of trade and commerce in the commodities dealt in by said respondents, as aforesaid, between and among the various States and Territories of the United States, the District of Columbia, and foreign countries; and that said respondents in the conduct of their said business have been in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. That said respondents in the conduct of their business, as set out in paragraph 1 herein, with the purpose, intent, and effect of stifling and suppressing competition in the sale of coffee and tea, have adopted the practice of leasing or loaning coffee urns to customers engaged in the business of conducting lunch rooms and restaurants, upon the expressed agreement that such customers would thereafter purchase from respondents all coffee and tea used by them in the conduct of their respective businesses, and without other consideration.

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, C. H. Kroneberger and W. M. Kroneberger, 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 by it in that respect would be to the interest of the public and fully stating its charges in this respect, and the respondents having entered their appearance by Henry Zoller, Jr., their attorney, and having filed their answer, and the matter hav-

ing been referred to a duly authorized examiner of the Commission, and the evidence of the Commission and respondents having been introduced pursuant to notice before said examiner, and counsel for the Commission having submitted his brief and argument in support of the charges in the complaint, and counsel for the respondents having waived the submission of briefs and argument, and the Commission being duly advised in the premises, now makes and enters this, its report, stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, C. H. Kroneberger and W. M. Kroneberger, are copartners doing business under the firm name and style of C. H. Kroneberger & Co., with their principal office and place of business located at the city of Baltimore, in the State of Maryland, now and for more than six years last past engaged in the business of buying and selling coffee, tea, sugar, and cocoa in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, C. H. Kroneberger and W. M. Kroneberger, partners, styling themselves C. H. Kroneberger & Co., in the conduct of their business, purchase coffee, tea, sugar, and cocoa in the various States of the United States and in foreign countries and cause the same to be transported from points outside the State of Maryland to their place of business in the city of Baltimore, where such commodities are resold by the respondents and shipped to customers thereof in the States of Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia.

PAR. 3. That for more that five years last past respondents, C. H. Kroneberger and W. M. Kroneberger, partners, styling themselves C. H. Kroneberger & Co., in the conduct of their business as aforesaid, have loaned coffee urns to proprietors of cafés and restaurants in the cities of Baltimore, State of Maryland; Wilmington, State of Delaware; Camden, State of New Jersey; and Washington, District of Co-

lumbia, upon the expressed or implied condition, agreement, or understanding, and without other consideration than, that such proprietors would purchase all or approximately all of their supplies of coffee from the said respondents.

PAR. 4. That in pursuance to the aforesaid and above-mentioned agreements, conditions, or understandings, proprietors of cafés and restaurants in said cities for more than five years last past have had the possession and beneficial use of coffee urns belonging to these respondents and, in consideration therefor, have purchased all or approximately all of their supplies of coffee from such respondents.

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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, C. H. Kroneberger and W. M. Kroneberger, partners, styling themselves C. H. Kroneberger & Co., having entered their appearance and filed their answer, and the Commission having heretofore made and filed its report containing its findings as to the facts and its conclusions 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," which report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondents, C. H. Kroneberger and W. M. Kroneberger, of Baltimore, State of Maryland, and

their representatives, agents, servants, and employees, cease and desist from directly or indirectly:

1. Leasing or loaning coffee urns to customers upon the agreement, condition, or understanding, either expressed or implied, that such customers will thereafter purchase from the respondent all the coffee used by them in the conduct of their respective businesses.

2. From continuing to operate under any such contracts or agreements heretofore made and entered into.

3. 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.

It is further ordered, That the respondents, C. H. Kroneberger and W. M. Kroneberger, shall file a report in writing with the Commission 90 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

THE JOHN H. WILKINS CO., INC.

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

Docket 509.—May 26, 1920.

SYLLABUS.

Where a corporation engaged in the purchase and sale of coffee, tea, sugar, and cocoa leased coffee urns to proprietors of cafés and restaurants in various cities, without other consideration than that such proprietors would purchase all or approximately all of their supplies of coffee from said corporation:

Held, That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that The John H. Wilkins Co., Inc., hereinafter referred to as the re-

spondent, has within the year last past violated and is violating 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, 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, The John H. Wilkins Co., Inc., is a corporation organized and existing under the laws of the District of Columbia, having its principal place of business in the city of Washington, District of Columbia, and is now and at all times hereinafter mentioned, has been engaged in the business of dealing in coffee, tea, and other commodities, purchasing same in wholesale quantities in the various States of the United States and in foreign countries, causing same to be transported from points outside the District of Columbia to its place of business in the District of Columbia, where said commodities are resold by respondent in wholesale quantities in the District of Columbia and in the States adjacent thereto, and there is continuously, and has been at all the times herein mentioned, a constant current of trade and commerce in the commodities dealt in by said respondent, as aforesaid, between the District of Columbia, the various States, and Territories of the United States and foreign countries; that said respondent in the conduct of its said business has been in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. That said respondent in the conduct of its business, as set out in paragraph one herein, with the purpose, intent, and effect of stifling and suppressing competition in the sale of coffee and tea, has adopted the practice of leasing or loaning coffee urns to customers engaged in the business of conducting lunch rooms and restaurants, upon the expressed agreement that such customers would thereafter purchase from respondent all coffee and tea used by them in the conduct of their respective businesses and without other consideration therefor.

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 respondent, The John H. Wilkins Co., Inc., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by Frank J. Hogan, its attorney, and having filed its answer admitting certain of the allegations of the complaint to be true in the manner and form set forth, and denying others contained therein, and the matter having been referred to a duly authorized examiner of the Commission, and the evidence of the Commission and the respondent having been introduced pursuant to notice before said examiner, and counsel for the Commission and the respondent having submitted their respective briefs, and thereafter counsel for the Commission having submitted his argument in support of the charges in the complaint, and counsel for the respondent having waived the submission of argument in support of his answer, and the Commission being duly advised in the premises now makes and enters this its report, stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The John H. Wilkins Co., Inc., is a corporation organized and existing under the laws of the District of Columbia, having its principal office and place of business in the city of Washington, in said District, and is now and for more than four years last past has been engaged in the business of dealing in coffee, tea, and bakery and confectionery supplies in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, The John H. Wilkins Co., Inc., in the conduct of its business purchases coffee, tea, and bakery and confectionery supplies in various States of the United States and in foreign countries, and causes the same to be transported from points outside the District of Columbia to its place of business in said city of Washington, where such commodities are resold by the respondent and shipped and delivered to customers thereof in the States of Virginia, Maryland, Pennsylvania, Delaware, West Virginia, and the District of Columbia.

PAR. 3. That for more than four years prior to the 1st day of March, A. D. 1920, the respondent, The John H. Wilkins Co., Inc., loaned coffee urns to proprietors of cafés and restaurants in the city of Washington in the District of Columbia upon the express or implied condition, agreement, or understanding and without other consideration than, that such proprietors would purchase all or approximately all of their supplies of coffee from the said respondent.

PAR. 4. That in pursuance to the aforesaid and above-mentioned agreements, conditions, or understanding 20 proprietors of cafés and restaurants in the city of Washington now and for more than four years last past have had the possession and beneficial use of coffee urns belonging to this respondent, and in consideration therefor have purchased and are now purchasing all or approximately all of their supplies of coffee from the respondent, The John H. Wilkins Co., Inc.

CONCLUSIONS.

That the methods of competition and the business practices set forth in the foregoing findings as to 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."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, The John H.

Wilkins Co., Inc., having entered its appearance and filed its answer, and the Commission having heretofore made and filed its report containing its findings as to the facts and its conclusions 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," which report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, The John H. Wilkins Co., Inc., of the District of Columbia, and its officers, directors, representatives, agents, servants, and employees, cease and desist from directly or indirectly—

1. Leasing or loaning coffee urns to customers upon the agreement, condition, or understanding, either expressed or implied, that such customers will thereafter purchase from the respondent all the coffee used by them in the conduct of their respective businesses.

2. From continuing to operate under any such contracts or agreements heretofore made and entered into.

3. 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.

It is further ordered, That the respondent, The John H. Wilkins Co., Inc., shall file a report in writing with the Commission 90 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

THE LEVERING COFFEE CO.

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

Docket 510—May 26, 1920.

SYLLABUS.

Where a corporation engaged in the purchase and sale of coffee, tea, sugar, and cocoa leased coffee urns to proprietors of cafes and

restaurants in various cities, without other consideration than that such proprietors would purchase all or approximately all of their supplies of coffee from said corporation:

Held, That the use of such leases constituted, under the circumstances set forth, an unfair method of competition in violation of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that The Levering Coffee Co., hereinafter referred to as the respondent, has within the year last past violated and is violating 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," 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, The Levering Coffee Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business located at the city of Baltimore, in the State of Maryland, and is now and at all times hereinafter mentioned has been engaged in the business of dealing in coffee and tea, purchasing same in wholesale quantities in the various States of the United States and in foreign countries, causing same to be transported from points outside the State of Maryland to its place of business in Baltimore, Md., where said commodities are resold by respondent in wholesale quantities in the State of Maryland and States adjacent thereto and in the District of Columbia, and there is continuously, and has been at all the times herein mentioned, a constant current of trade and commerce in the commodities dealt in by said respondent, as aforesaid, between and among the various States and Territories of the United States, the District of Columbia, and foreign countries; that said respondent in the conduct of its said business has been in direct active competition with other individuals, partnerships, and corporations similarly engaged.

PAR. 2. That said respondent in the conduct of its business, as set out in paragraph 1 herein, with the purpose, intent, and effect of stifling and suppressing competition in the sale of coffee and tea, has adopted the practice of leasing or loaning coffee urns to customers engaged in the business of conducting lunch rooms and restaurants, upon the expressed agreement that such customers would thereafter purchase from respondent all coffee and tea used by them in the conduct of their respective businesses, and without other consideration.

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 respondent, The Levering Coffee Co., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect and the respondent having filed its answer, admitting that the matters and things alleged in the said complaint are true and thereafter the Commission, pursuant to notice, having proceeded to introduce its evidence in support of its charges before a duly authorized examiner and the respondent having failed to appear and making default, and counsel for the Commission having presented his brief and argument in support of the charges in the said complaint, and the Commission being duly advised in the premises now makes and enters this its report, stating its findings as to the facts and its conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Levering Coffee Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland.

with its principal office and place of business located at the city of Baltimore in said State.

PAR. 2. That the respondent, The Levering Coffee Co., is now and for more than one year last past has been engaged in the business of dealing in coffee and tea, and in the conduct of its business purchases the same in wholesale quantities in various States of the United States and foreign countries, causing the same to be transported therefrom in and to the city of Baltimore, State of Maryland, where the same are sold and reshipped in wholesale quantities to customers in the State of Maryland and States adjacent thereto and in the District of Columbia.

PAR. 3. That in the conduct of its business as aforesaid, the respondent, The Levering Coffee Co., for more than four years last past has loaned coffee urns to proprietors of lunch rooms and cafés in the city of Washington, D. C., upon the express condition, agreement, or understanding and without other considerations than that such proprietors would purchase all of their supplies of coffee from said respondent, a copy of such contracts or agreements is attached hereto and made a part hereof, marked "Exhibit A."

PAR. 4. That proprietors of cafés and lunch rooms in the city of Washington, D. C., have during the four years last past obtained coffee urns from the Levering Coffee Co. under and by virtue of the terms and agreements of the above-mentioned and described contracts and without other consideration and have ever since and still do purchase their entire or a large percentage of their supplies of coffee from said the Levering Coffee Co., respondent herein.

PAR. 5. That the respondent, The Levering Coffee Co., is now and for more than four years last past has been selling coffee and tea in commerce aforesaid in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

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 provi-

sions 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."

EXHIBIT A.

This agreement, made this _____ day of _____ 191_ by and between the Levering Coffee Co., of the city of Baltimore, State of Maryland, party of the first part, and _____ of _____, party of the second part.

Witnesseth that the party of the second part does hereby agree to purchase from the party of the first part all of the coffee and tea used by him in the conduct of his business, from the date hereof until this agreement is terminated as hereinafter provided, and to pay promptly all bills owing to the party of the first part as same shall mature.

In consideration whereof the party of the first part does hereby agree to loan to the party of the second part_____

_____

for so long a time or term as the party of the second part continues to purchase from the party of the first part all of the coffee and tea used by him in the conduct of his business, or until this agreement be terminated for any cause whatsoever.

It is understood and agreed that if, at any time, the party of the second part fails to purchase from the party of the first part all of the coffee and tea used by him in the conduct of his business as aforesaid, or in case that said party of the second part fails to settle his accounts due and owing to the said party of the first part promptly as they mature, or when this agreement is terminated for any reason whatsoever, the said party of the first part shall have the right at any time thereafter to repossess themselves of the said coffee urns without notice or proceeding at law, and the said party of the second part hereby agrees peaceably and promptly to deliver up the same to the said party of the first part, their agent or representative without let or hindrance, it being hereby expressly understood and agreed that the title to the said coffee urns, etc., shall at all times remain in the party of the first part, said coffee urns, etc., being hereby loaned but not sold.

And the said party of the second part covenants not to injure or to remove the said coffee urns from the place to which they are delivered, nor in any way to part with their custody or possession without first obtaining the consent in writing of the party of the first part. And the said party of the second part does hereby agree to pay to the said party of the first part the cost of replacing any and all parts of said coffee urns that may become broken or damaged while in his possession.

It is hereby understood and agreed that this agreement shall remain in full force until there is a breach by one of the parties hereto, or until terminated by the parties hereto or either of them, by giving at least five days previous notice thereof in writing; or should the party of the second part fail to settle promptly all of his accounts with the said party of the first part as they mature, the said party of the first part can immediately terminate this agreement without notice, and repossess themselves of the said coffee urns in manner as mentioned above, wherever they may be found. It is also agreed and understood that the continuation of this agreement from time to time is conditioned upon both of the parties hereto remaining in the same business in which they are engaged at the date hereof.

It is hereby declared and understood that no agreement, written or verbal, has been made modifying or altering the above in any particular.

In witness whereof the said parties have hereunto set their hands and seals the day and year aforesaid.

Witness:

_____ _____ (Seal.)
(As to party of first part.)

_____
(As to party of second part.)

By _____ (Seal.)

_____

The undersigned owner and landlord of premises on which the within-mentioned coffee urns are to be placed, in consideration of said coffee urns being delivered on said premises does hereby waive all of his rights against said urns for rent under the lien pledge and privilege or any other law accorded to landlords.

Witness:

_____ _____
(Owner Landlord.)

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent, The Levering Coffee Co., having filed its answer, admitting the allegations in the said complaint and the Federal Trade Commission having thereafter introduced its evidence in support of the charges in the said complaint, and having made and filed its report, containing its findings as to the facts and its conclusions 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," which report,

findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, The Levering Coffee Co., of Maryland, and its officers, directors, representatives, agents, servants, and employees, cease and desist from directly or indirectly:

1. Leasing or loaning coffee urns to customers upon the agreement, condition, or understanding, either expressed or implied, that such customers will thereafter purchase from the respondent all the coffee used by them in the conduct of their respective businesses.

2. From continuing to operate under any such contracts or agreements heretofore made and entered into.

3. 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.

It is further ordered, That the respondent, The Levering Coffee Co., shall file a report in writing with the Commission 90 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

FEDERAL TRADE COMMISSION

v.

PAN MOTOR CO., AND SAMUEL C. PANDOLFO.

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

Docket 273.—May 27, 1920.

SYLLABUS.

Where a corporation organized for the ostensible purpose of manufacturing and selling automobiles in large quantities, acting through its president and fiscal agent, who was also its promoter, in selling and offering for sale the stock of the corporation,

(a) advertised and circulated false, misleading, and unfair reports and statements concerning the plan of organization, the assets, resources, business, progress, good will, and financial standing and responsibility of said corporation, and suppressed and concealed from the public facts relating to and affecting the plans of organization and the financial standing and condition thereof;

(*b*) falsely stated, advertised, and published that individual subscriptions to the stock of said corporation would be limited and that a limited allotment of stock would be made to particular States, cities, and communities;

(*c*) advertised, published, and circulated false and misleading statements, circulars, etc., regarding certain automobiles and motor vehicles represented as being manufactured by said corporation;

(*d*) procured the publication of articles and reports endorsing and praising said corporation, its officers and organization, and caused said articles to be reprinted and circulated, falsely representing and advertising the same to have been written and published independently and voluntarily by disinterested parties;

(*e*) caused to be printed, advertised, and circulated certain letters purporting to be letters indorsing said individual and said corporation, after the authors thereof had withdrawn and repudiated the same and forbidden their further use and circulation;

(*f*) made, published, advertised, and circulated false and misleading statements, representations, predictions, and promises relating to the design, production, and manufacture of a certain motor tractor, described as the "Pan Tank-Tread Tractor";

(*g*) made, published, advertised, and circulated false and misleading statements, announcements, and reports regarding the value of the stock of said corporation, and false, misleading, and exaggerated statements, reports, and predictions regarding the volume and nature of the business done by said corporation for the United States Government, with the purpose of creating the impression and belief that the stock of said corporation was ratably equal in value to Liberty bonds:

Held, that such false representations, methods, practices, and course of conduct, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Pan Motor Co. and Samuel C. Pandolfo, 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 the respondent, Pan Motor Co., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of St. Cloud, State of Minnesota; that the said respondent, Pan Motor Co., was incorporated the 9th day of January, 1917, and has an authorized capital of $5,000,000 common stock divided into shares of the par value of $5 each; that the said stock has been offered and sold to the public at $10 per share under a subscription agreement of substantially the following form and tenor, to wit:

SUBSCRIPTION FOR STOCK OF THE PAN MOTOR COMPANY.

Price per share, $10.00. Par value per share, $5.00. Application by mail.

I hereby subscribe for _____ shares of the capital stock of the Pan Motor Company, incorporated under the laws of Delaware for $5,000,000.00, and agree to pay for same as follows:

$_____ with this application,

$_____ on the ____ day of _____, 191_,

$_____ on the ____ day of _____, 191_, and

$_____ on the ____ day of _____, 191_.

This stock is nonassessable and carries voting privileges.

This stock, when fully paid for in cash, to be issued to me or my order.

The legal owners of this stock shall be entitled to purchase automobiles, and other machines manufactured by the Pan Motor Co., for their own personal use, at the catalogue price, less 15 per cent, f. o. b. the factory.

I agree that the immediate value of this stock is at least $10 per share, due to the plan of organization in creating advance purchasers for the company's products wherever possible while selling the company's stock, and I expressly agree and consent that the first half of the amount of this subscription shall be construed as the excess amount over and above par and which the directors may use for any and all purposes for the benefit of the company within their discretion.

This application and the stock certificate, when issued, constitute the entire contract between the company and the subscriber. No alterations or variations hereof, and no statements, promises, or

agreements not contained herein, shall be binding on said company unless expressly approved in writing by an executive officer of said company.

(Signature of subscriber.)

(Also print name of subscriber plainly on this line above.) (Street and number.)

(Date.) (Town and State.)

PAR. 2. That the respondent, Samuel C. Pandolfo, conceived and promoted the Pan Motor Co. and caused the same to be incorporated and organized; for over two years last past has been and is now the president and fiscal agent, thereof; and has at all times since the incorporation of said company, controlled and managed said company through officers and directors selected by himself.

PAR. 3. That the respondent, Pan Motor Co., was organized and incorporated by the respondent, Samuel C. Pandolfo, ostensibly for the purpose of manufacturing passenger automobiles, and was advertised and represented to the public, both before and after incorporation, as a company which would manufacture passenger automobiles in large quantities; that said company has not manufactured automobiles or motor vehicles, but has merely assembled approximately 200 passenger automobiles.

PAR. 4. That, as of the 28th day of February, 1919, there was issued and outstanding stock of the respondent, Pan Motor Co., of the par value of $2,064,943.06, for which the subscribers severally paid the sum of $10 per share; and the said Pan Motor Co. had received additional subscriptions to its capital stock aggregating the sum of $1,042,866.94, par value, for which the subscribers severally had agreed to pay the sum of $10 per share; and, as of said date, the respondent, Pan Motor Co., had received from the sale of its stock the sum of $1,723,811.69; that said stock has been sold and distributed throughout the United States and in foreign countries, and on or about the 19th day of March, 1919, there were of record 54,000 subscribers to the stock of the said Pan Motor Co., of whom 39,000 had fully paid their subscriptions. That, as of September 30, 1918, the sum of $1,156,667.53 had been paid as commissions to salesmen and

agents for the sale of stock; the sum of $553,752.38 had been paid to Samuel C. Pandolfo, as commissions, and for alleged services; and other large sums have been paid and expended for advertising, secret service, salaries, and other matters and things.

PAR. 5. That from in or about the month of June, 1916, until the 9th day of January, 1917, the respondent Samuel C. Pandolfo solicited subscriptions to the stock of the Pan. Motor Co. throughout the United States prior to the incorporation of said company; that since the incorporation of the said company, on the 9th day of January, 1917, the respondent Pan Motor Co. and Samuel C. Pandolfo, the president and fiscal agent of the said company, have continued to solicit subscriptions for said stock throughout the United States by means of advertisements in newspapers and magazines, circular letters, pamphlets, reports and special articles, and through personal solicitation by a large force of agents.

PAR. 6. That since the 9th day of January, 1917, the stock of the Pan Motor Co. has been offered and sold in interstate commerce by respondents in competition with divers other persons, firms, copartnerships, and corporations.

PAR. 7. That in connection with the sale and offering for sale of said stock in the course of said commerce, respondents, and each of them, have practiced certain unfair methods of competition, hereinafter set forth in paragraphs 8 to 15, inclusive.

PAR. 8. That during a period of two and one-half years last past, and for the purpose 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 respondents and each of them at divers times have made, published, advertised, and circulated false, misleading, and unfair reports and statements concerning the plan of organization, the assets, resources, business, progress, good will, and financial standing and responsibility of the respondent Pan Motor Co., and have suppressed and concealed from the public facts relating to and affecting the plans of organization and the financial standing

and condition of the said company; and respondents continue so to do.

PAR. 9. That during said period and with like purpose and effect the respondents, and each of them, at divers times have falsely stated, represented, advertised, and published that subscriptions to the capital stock of the Pan Motor Co. would be limited to 25 shares to each subscriber and that limited allotments for stock would be made to particular States, cities, and communities, whereas in fact subscriptions and allotments were not so limited.

PAR. 10. That during said period and with like purpose and effect the respondents, and each of them, at divers times have made, advertised, published, and circulated false and misleading statements, circulars, advertisements, pamphlets, and publications regarding the design, manufacture, production, and price of certain automobiles and motor vehicles represented as being manufactured by the respondent, Pan Motor Co.; and respondents continue so to do.

PAR. 11. That during said period and with like purpose and effect respondents, and each of them, at divers times have procured the publication of articles and reports indorsing and praising the Pan Motor Co., its officers and organization; and said respondents, and each of them, have caused the said articles to be reprinted, published, and circulated, and have falsely represented and advertised the same to have been written and published independently and voluntarily by disinterested parties; and respondents continue so to do.

PAR. 12. That during said period and with like purpose and effect respondents, and each of them, at divers times have caused to be printed, published, advertised, and circulated certain letters purporting to be letters indorsing the respondent, Samuel C. Pandolfo, and the respondent, Pan Motor Co., after the respective authors of the letters had withdrawn and repudiated the same and forbidden the further use and circulation thereof; and the respondents continue so to do.

PAR. 13. That during said period and with like purpose and effect respondents, and each of them, at divers times have

made, published, advertised, and circulated false and misleading statements, representations, predictions, and promises relating to the design, production, and manufacture of a certain motor tractor, described as the "Pan Tank-Tread Tractor"; and respondents continue so to do.

PAR. 14. That during said period and with like purpose and effect respondents, and each of them, at divers times have made, published, advertised, and circulated false, misleading, unfair, and unfounded statements, charges, criticisms, and comments regarding the jurisdiction, authority, investigations, reports, findings, proceedings, and orders of various State, municipal, and governmental departments, commissions, committees, and agencies, and the personnel thereof; and respondents continue so to do.

PAR. 15. That during said period and with like purpose and effect, and with the further purpose and intent of creating the impression and belief that the stock of the Pan Motor Co. was ratably equal in value to Liberty bonds, respondents, and each of them at divers times have made, advertised, published, and circulated false and misleading statements, announcements, and reports regarding the value of the stock of the Pan Motor Co., and false and misleading and exaggerated statements, representations, reports, and predictions regarding the volume and nature of the business done by the Pan Motor Co. for the United States Government.

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, Pan Motor Co. and Samuel C. Pandolfo, 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 by it in respect thereof would be to the interest of the public, and

fully stating its charges in that respect, and respondents having entered their appearance and having filed their answer admitting certain allegations of said complaint and denying certain others thereof, and the Commission having offered testimony in support of the charges of said complaint, and the respondent Samuel C. Pandolfo having rested his case without introducing evidence, and the respondent Pan Motor Co. having introduced its evidence, and the matter having been duly argued before the Commission by counsel for the respondent Pan Motor Co., and the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Pan Motor Co., is a corporation existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of St. Cloud, Minn.; that the said respondent, Pan Motor Co., was incorporated the 9th day of January, 1917, with an authorized capital stock of $5,000,000, common stock divided into shares of the par value of $5 each; that the said stock has been offered and sold to the public at $10 per share.

PAR. 2. That the said Pan Motor Co. was conceived and promoted by the respondent, Samuel C. Pandolfo, who caused the said company to be incorporated and organized.

PAR. 3. That during the months of October, November, and December, 1916, and prior to the incorporation of the said Pan Motor Co., the respondent, Samuel C. Pandolfo, solicited and obtained subscriptions to stock of the said Pan Motor Co.

PAR. 4. That during the said months of October, November, and December, 1916, and thereafter subsequent to the incorporation of the said Pan Motor Co., the stock of the said company was offered and sold to subscribers under a subscription agreement of substantially the following form and tenor, to-wit:

413 Findings.

SUBSCRIPTION FOR STOCK OF THE PAN MOTOR COMPANY.

Price per share, $10.00. Par value per share, $5.00. Application by mail.

I hereby subscribe for _____ shares of the capital stock of the Pan Motor Company, incorporated under the laws of Delaware for $5,000,000.00, and agree to pay for same as follows:

$_____ with this application,
$_____ on the ____ day of _____ 191_,
$_____ on the ____ day of _____ 191_, and
$_____ on the ____ day of _____ 191_.

This stock is nonassessable and carries voting privileges.

This stock, when fully paid for in cash, to be issued to me or my order.

The legal owners of this stock shall be entitled to purchase automobiles and other machines manufactured by the Pan Motor Company, for their own personal use, at the catalogue price, less 15 per cent, f. o. b. the factory.

I agree that the immediate value of this stock is at least $10.00 per share, due to the plan of organization in creating advance purchasers for the company's products wherever possible while selling the company's stock, and I expressly agree and consent that the first half of the amount of this subscription shall be construed as the excess amount over and above par and which the directors may use for any and all purposes for the benefit of the company within their discretion.

This application and the stock certificate, when issued, constitute the entire contract between the company and the subscriber. No alterations or variations hereof, and no statements, promises, or agreements, not contained herein, shall be binding on said company unless expressly approved in writing by an executive officer of said company.

_____
(Signature of subscriber.)

_____ _____
(Also print name of subscriber plainly on this line above.) (Street and number.)

_____ _____
(Date.) (Town and State.)

PAR. 5. That the respondent, Samuel C. Pandolfo, caused the said Pan Motor Co. to be organized and incorporated ostensibly for the purpose of manufacturing passenger automobiles, and the said Samuel C. Pandolfo, both before and after the incorporation of said company, advertised and represented same to the public as a company which would manufacture automobiles in large quantities.

PAR. 6. That upon the incorporation of the said Pan Motor Co., the respondent Samuel C. Pandolfo, claiming to act by authority of the subscribers to the stock of said company, placed in office a board of directors selected by himself.

PAR. 7. That after the incorporation of the said Pan Motor Co., the said Samuel C. Pandolfo induced the said board of directors to enter into certain contracts wherein and whereby the said Samuel C. Pandolfo was appointed the fiscal agent of the company and was intrusted with the entire supervision of the sale of the stock of said company, and was permitted and allowed to retain the first $5 paid upon each share of stock, pursuant to the aforesaid subscription agreement; that the contracts between the said Samuel C. Pandolfo and the Pan Motor Co. were modified from time to time, in some respects, but from the time of the incorporation of the said company, up to the month of December, 1919, said Samuel C. Pandolfo had entire charge of the sale of the stock of said company and all the advertising conducted in connection therewith.

PAR. 8. That since the 9th day of January, 1917, the stock of the Pan Motor Co. has been offered and sold in interstate commerce by the respondents in competition with divers other persons, firms, copartnerships, and corporations selling stocks and other securities.

PAR. 9. That up to the commencement of this proceeding there was issued and outstanding stock of the respondent Pan Motor Co. of the par value of $2,064,913.06, for which the subscribers severally paid the sum of $10 per share; that the said Pan Motor Co. had, up to the commencement of this proceeding, received additional subscriptions to its capital stock aggregating the sum of $1,042,866.94, par value, for which the subscribers severally had agreed to pay the sum of $10 per share, and at the commencement of this proceeding the Pan Motor Co. had received from the sale of its said stock the sum of $4,723,811.69; that the said stock has been sold and distributed throughout the United States and in foreign countries, and on or about the 19th day of March, 1919, there were of record 54,000 subscribers to the stock of

the said Pan Motor Co., of whom 39,000 had fully paid their subscriptions; that as of September 30, 1918, the sum of $1,156,667.53 had been paid as commissions to salesmen and agents for the sale of stock of said company. That as of September 30, 1918, the sum of $553,752.38 had been received and retained by the respondent Samuel C. Pandolfo as alleged commissions and for alleged services as fiscal agent for said company; that other large sums aggregating over $500,000 have been paid and expended from the proceeds of the sale of said stock for advertising, salaries, and other purposes.

PAR. 10. That both before and since the incorporation of the said Pan Motor Co., the respondent Samuel C. Pandolfo, as fiscal agent of said company, solicited subscriptions to the stock of the said Pan Motor Co. throughout the United States by means of advertisements in newspapers and magazines, circular letters, pamphlets, reports, and special articles, and through personal solicitation by a large force of stock salesmen.

PAR. 11. That in connection with the sale and offering for sale of said stock in the course of interstate commerce the respondents, Samuel C. Pandolfo and Pan Motor Co., have practiced certain unfair methods of competition hereinafter set forth:

(*a*) That during a period of two and one-half years last past and for the purpose of selling said stock and obtaining subscriptions therefor, the respondent Samuel C. Pandolfo, as fiscal agent for said company, at divers times has made, published, advertised, and circulated false, misleading, and unfair reports and statements concerning the plan of organization, the assets, resources, business, progress, goodwill, and financial standing and responsibility of the respondent Pan Motor Co., and has suppressed and concealed from the public facts relating to and affecting the plans of organization and the financial standing and condition of the said company.

(*b*) That during said period, the respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers

times has falsely stated, represented, advertised, and published that subscriptions to the capital stock of the Pan Motor Co. would be limited to 25 shares to each subscriber and that limited allotments for stock would be made to particular States, cities, and communities; whereas in fact subscriptions and allotments were not so limited.

(*c*) That during said period the respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has made, advertised, published, and circulated false and misleading statements, circulars, advertisements, pamphlets, and publications regarding the design, manufacture, production, and price of certain automobiles and motor vehicles represented as being manufactured by the respondent Pan Motor Co.

(*d*) That during said period respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has procured the publication of articles and reports indorsing and praising the Pan Motor Co., its officers, and organization; and said respondent has caused the said articles to be reprinted, published, and circulated, and has falsely represented and advertised the same to have been written and published independently and voluntarily by disinterested parties.

(*e*) That during said period respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has caused to be printed, published, advertised, and circulated certain letters purporting to be letters indorsing the respondent Samuel C. Pandolfo and the respondent Pan Motor Co. after the respective authors of the letters had withdrawn and repudiated the same and forbidden the further use and circulation thereof.

(*f*) That during said period respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has made, published, advertised, and circulated false and misleading statements, representations, predictions, and promises relating to the design, production, and manufacture of a certain motor tractor, described as the "Pan Tank-Tread Tractor."

(*g*) That during said period, and with the further purpose and intent of creating the impression and belief that the stock of the Pan Motor Co. was ratably equal in value to Liberty bonds, respondent Samuel C. Pandolfo, as fiscal agent of said company, at divers times has made, advertised, published, and circulated false and misleading statements, announcements, and reports regarding the value of the stock of the Pan Motor Co., and false and misleading and exaggerated statements, representations, reports, and predictions regarding the volume and nature of the business done by the Pan Motor Co. for the United States Government.

PAR. 12. That in the month of December, 1919, the board of directors requested the resignation of the respondent Samuel C. Pandolfo as director and president of the respondent Pan Motor Co., and on December 12, 1919, the respondent Samuel C. Pandolfo resigned as such president and director.

CONCLUSIONS.

That the methods and practices hereinbefore set out were devised and used by the respondent Samuel C. Pandolfo as president and fiscal agent of the respondent Pan Motor Co. for its benefit and in its behalf and were devised and used by the said Samuel C. Pandolfo individually and in his own behalf, and that as to each respondent, the methods and practices herein above set forth constituted unfair methods of competition.

ORDER TO CEASE AND DESIST.

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, Pan Motor Co. and Samuel C. Pandolfo, 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 by it in re-

spect thereof would be to the interest of the public, and fully stating its charges in that respect, and respondents having entered their appearance and having filed their answer admitting certain allegations of said complaint and denying certain others thereof, and the Commission having offered testimony in support of the charges of said complaint, and the respondent Samuel C. Pandolfo having rested his case without introducing evidence, and the respondent Pan Motor Co. having introduced its evidence, and the matter having been duly argued before the Commission by counsel for respondent Pan Motor Co., and the Commission having duly considered the record, and being fully advised in the premises, and having made and filed its report, findings as to the facts, and conclusions, which said report, findings, and conclusion are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondents, Samuel C. Pandolfo and Pan Motor Co., forever cease and desist from directly or indirectly:

(1) Publishing, advertising, or circulating false, misleading, or unfair reports or statements concerning the plan of organization, the assets, resources, business, progress, good will, or financial standing of the Pan Motor Co.; or concerning the value of the stock thereof.

(2) Making, advertising, publishing, or circulating false or misleading statements, circulars, advertisements, pamphlets, or publications regarding the design, manufacture, production, or price of certain automobiles or motor vehicles represented as being manufactured by the Pan Motor Co.

(3) Causing to be printed, published, advertised or circulated any letters purporting to be indorsements of said Samuel C. Pandolfo or said Pan Motor Co., when the authors of such letters have withdrawn or repudiated the same or forbidden the further use or circulation thereof.

(4) Making, publishing, or circulating any false statement or advertisement for the purpose of selling the stock of the Pan Motor Co. in interstate commerce.

And it is further ordered, That said respondents, Pan Motor Co. and Samuel C. Pandolfo, shall within 60 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.

A. A. BERRY SEED CO.

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

Docket 534.—May 27, 1920.

SYLLABUS.

Where a corporation engaged in the sale of farm, garden, and flower seed, upon the mail-order plan; with a capacity to mislead the public—

I

(*a*) falsely represented and guaranteed in its catalogues that all its seed was of high germination, and repeatedly set forth therein that such seed was recleaned and free from all weed seed, particularly the seed of what are declared noxious weeds under the pure-seed laws of many States;

(*b*) falsely represented in one of its catalogues that a large portion of its grass seed was grown by farmers in its immediate vicinity, the most fertile section of the State, and that it contracted for such seed at the lowest possible cost with no freight, profit, or commission to be paid;

(*c*) falsely represented in its catalogues that it secured its grass seed direct from the producers in carload lots and that it had the advantage of being located in the midst of an ideal grass region;

(*d*) falsely represented that it was careful to get supplies free from harmful seeds; that it tried to buy only the best seed, and that its "World Brand," its best grade, consisted only the cream of the crop, was free from all foreign matter, was as near perfect seed as could be produced, had no superior, and that its "World's Brand meets State's purity standard";

(*e*) falsely stated in one catalogue that the seed laws of all States had its hearty approval; that it would not deal in seed containing noxious weed seed; that every bag of seed shipped by it bore a tag giving in

accurate figures the percentage of seed that would germinate, the purity thereof, and the percentage of foreign matter contained therein;

(*f*) advertised and sold various kinds of clover, alfalfa, and timothy seed, falsely representing that its clover seed was free from foreign seeds and of strong germination; that it was "right on the ground floor in the production of the most superior seed that it is possible to grow"; that it offered "seed of only the highest quality in purity and germination, using the skill of a lifetime in producing a quality that is superior and unequaled by any other seed house"; that it contracted for the best fields of sweet clover, and was headquarters for the highest quality of seed;

(*g*) falsely advertised the percentage of alsike, the most expensive seed ingredient in certain alsike and timothy, red clover and timothy, and clover, alsike, and timothy mixtures sold by it; and further falsely stated the percentage of legume crops in another grass-seed mixture sold by it as Bonanza Mixture; and also that all such grass-seed mixtures had been thoroughly recleaned and were free from noxious weeds;

(*h*) failed in its catalogue to advise prospective purchasers that any of its brands contained weed seed, and to show the weed seed content on the tags attached to the bags of seed, as required by the seed laws of various States.

II.

Where said corporation dealing with retailers and agents as the Standard Seed Co.—

(*a*) advertised said Standard Seed Co. as a separate and distinct company, and issued and circulated throughout the country a catalogue under said trade name which it kept separate and distinct from that of the A. A. Berry Seed Co. (although said corporation supplied the seed thus sold from its general stock, usually purchased practically its entire stock under its own name, and made only occasional purchases under the name of Standard Seed Co.);

(*b*) falsely represented in its Standard Seed Co. catalogues, in practically the identical words used in its regular A. A. Berry catalogues, that such seed was clean, pure, and thoroughly recleaned; that nothing but pure seed, all tested in its laboratories before being sent out, was sold, and that purity and germination test of each lot of seed was put on the tag attached to each shipment, to inform the purchaser of the quality of seed purchased;

(*c*) falsely represented that its clover, alfalfa, timothy, and sweet clover seeds had been thoroughly recleaned; that its two best grades were free from noxious weed seed; that its alsike and timothy mixed, clover and timothy mixed, clover, alsike, and timothy mixed, and Bonanza Mixture had been carefully recleaned,

were free from noxious weed seed, and of high germination, and that its "Best Grade" was made from the cream of the crop:

Held, That such false and misleading advertising, and such course of conduct, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the A. A. Berry Seed Co., 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 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 A. A. Berry Seed Co., is a corporation organized and existing under the laws of the State of Iowa, having its principal office and place of business in the city of Clarinda, in said State, and is now and for more than one year last past, has been engaged in the business of dealing in seeds, including farm, garden, and flower seeds, purchasing its supply of seeds from growers and dealers in various States of the United States and causing same to be transported from points, both within and outside the State of Iowa, to Clarinda, Iowa, where same are resold by respondent upon mail orders to purchasers in the various States of the United States and the Territories thereof, and respondent causes said seeds to be transported when sold, from the State of Iowa through and into various other States of the United States and Territories thereof.

PAR. 2. That said respondent, in the course of its said business, makes use of catalogues and other advertising matter, which are given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertising matter contain certain false and misleading statements concerning

the grade and quality of the seeds sold by said respondent; that among such false and misleading statements are statements to the effect that the seeds sold by respondent are of the highest quality; are grown in the most favored seed sections, and possess the strongest germination and vitality; that such seeds are thoroughly cleaned and tested and guaranteed to be free from noxious weed seeds; that most of the seeds sold by respondent are grown on contracts made by respondent with responsible growers; whereas said respondent procures its supply of seeds chiefly from indiscriminate seed growers and other dealers in seeds who furnish to respondent the cheaper, inferior, and rejected grades of seeds, which respondent attempts to clean, selling the seeds so cleaned or mixed with seeds of a better grade, under the designation of "Intermediate" grade, without disclosing to the public how this grade of seeds is produced; in this way respondent has become an outlet for the marketing of low-grade seeds rejected by other dealers, which low grades of seeds contain large quantities of seeds of noxious weeds which overrun the land in the vicinity where the seeds are planted and are very difficult to eradicate.

PAR. 3. That said respondent conducts certain portions of its business under the trade name and style of "Standard Seed Co." and has concealed its ownership and control of said Standard Seed Co., but has held the said Standard Seed Co. out to the public and advertised it as wholly independent and without connection with respondent; that respondent has used the "Standard Seed Co." as a means of acquiring and holding trade which respondent was unable to acquire direct, and purchasers of seeds who do not desire to purchase seeds from respondent on account of the inferior grade of seeds sold by it, are fraudulently induced to trade unknowingly with the respondent through the instrumentality of said Standard Seed Co.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein wherein it alleged that it had reason

to believe that the above-named respondent, A. A. Berry Seed Co., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by Jeffery, Campbell & Clark, its attorneys, and having filed its answer and amended answer to said complaint; and the attorneys for both parties having thereafter signed and filed an agreed statement of facts wherein it was stipulated and agreed that said agreed statement of facts should be taken as the evidence herein and in lieu of testimony, and that the Federal Trade Commission should forthwith proceed, upon said agreed statement of facts, to make and enter its report stating its findings as to the facts and its conclusions and its order disposing of this proceeding; and the attorneys for both parties having filed briefs and the Commission having heard the arguments of counsel on the merits of the case and having duly considered the record and being fully advised in the premises now makes this its report and findings as to the facts and its conclusions as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, A. A. Berry Seed Co., is and was at all times herein mentioned a corporation organized and existing under the laws of the State of Iowa, having its principal office and place of business in the city of Clarinda in said State.

PAR. 2. That respondent was, in the year 1917, and ever since has been engaged in the business of selling seed, including farm, garden, and flower seed, at Clarinda, Iowa, aforesaid, and shipped the same to purchasers in the various States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent conducts a large part of its said business upon the mail-order plan, publishing and circulat-

ing throughout the United States annual catalogues containing descriptions of the various kinds and grades of seed sold by it. These catalogues are sent direct to farmers and to those desirous of purchasing seed and they in turn send their orders to respondent company and the seed is shipped to them. Respondent employs no agents in the conduct of its business under the name of A. A. Berry Seed Co., but relies entirely on its catalogues and other advertising matter to effect sales.

PAR. 4. That for more than one year last past and specifically in its catalogues published in and for the years 1917 and 1919, and distributed by it throughout the various States and Territories of the United States as aforesaid, respondent has made statements concerning the grade and quality of its various kinds of seed, and to effect the sales thereof, which statements are in many particulars false and misleading and calculated to mislead purchasers and prospective purchasers of such seed.

PAR. 5. That in both its 1917 and 1919 catalogues respondents represented and guaranteed its seed to be of high germination, and that this statement and guarantee applied to all seed sold by respondent; said statement is and was in fact untrue in that respondent's seed was and is not all of high germination, as admitted by respondent, and as further shown by analyses made of various samples by the State seed analysts of certain States, these anlyses in some cases showing germination tests as low as 30 per cent and 49 per cent.

PAR. 6. That in its 1919 catalogue respondent stated and represented a large proportion of its grass seed was grown by farmers in the immediate vicinity of Clarinda, Iowa, the most fertile section of the State, and that respondent contracted for such seed at the lowest possible cost with no freight, profit, or commission to pay; that such statements were false and misleading by reason of the fact that respondent purchased a large proportion of its grass seed from other seed houses in the same way as its competitors and had no growers under contract to grow grass seed for it.

PAR. 7. That in both its 1917 and 1919 catalogues respondent stated and represented that it secured its grass seed di-

rect from the producers in carload lots and that it had the advantage of being located in the midst of an ideal grass region; that such statements were false and misleading in that respondent did not secure all of its grass seed direct from producers, but secured a large proportion thereof from other seed companies.

PAR. 8. That in both its 1917 and 1919 catalogues respondent repeatedly asserts and calls attention to the alleged fact that its seed is recleaned and is free from all weed seed, including in particular the seed of what are declared to be noxious weeds under the pure-seed laws of many of the States; that such statements were and are false and misleading in that respondent's said seed did, in fact, contain considerable quantities of weed seed, including noxious weeds, as well as other foreign matter, and had not been cleaned of all these impurities as claimed by respondent. That it is admitted by respondent that it is possible to obtain seed where the percentage of weed seed content is less than 1 per cent.

PAR. 9. That respondent separates its seed into four grades, which it calls World Brand (Extra Fancy), Dealer's Fancy, Planet Brand (Extra Choice), and Star Brand; World Brand being the finest grade and Star Brand the cheapest. That it claims that all its grades have been recleaned; that it is careful to get lots free from harmful weeds and tries to buy only the best seed. It states that its Planet Brand is thoroughly recleaned and contains no dangerous weed seed, and that its Dealer's Fancy is a very fancy grade of seed which has been carefully recleaned. Respondent claims that its World Brand consists of only the cream of the crop, is free from all foreign matter, and is as near perfect seed as it can be made, and that there is no superior to this grade, and in its 1919 catalogue it states that "Berry's World Brand meets State's purity standard." That each and every one of these various brands has, in fact, been found to contain weed seed, and also in many instances the seed of certain weeds which are declared by various States to be noxious weeds.

PAR. 10. That respondent has made shipments of its World Brand seeds into the States of Michigan, Wisconsin, and Illinois, and samples of certain of these shipments have been analyzed by the State seed analysts of those States; these analyses showed all these samples to contain various kinds of weed seed, including the seed of weeds declared to be noxious by the pure-seed laws of those States, in certain instances in quantities sufficient to condemn the sale of the seed in such States. That analyses made by State seed analysts of various States of shipments of its other grades of seed made by respondent into their States have shown said shipments invariably to contain large numbers of weed seeds of many varieties, and in the majority of instances the seeds of weeds that are declared to be noxious by the pure-seed laws of said States.

PAR. 11. That respondent states in its 1919 catalogue that the seed laws of all States have its hearty approval; that it stands the test and will not deal in seed that contains noxious weed seed, and that every bag of seed shipped by it bears a tag giving in accurate figures the percentage of seed that will germinate, and the purity of the seed and the percentage of foreign matter contained therein. That these statements are false and misleading in that respondent does deal in seed containing noxious weed seed, and has shipped seed into States having pure-seed laws providing for the labeling of the purity, germination, and weed content of seeds sold therein, without so labeling its shipments; and that in many instances where seed has been labeled by respondent the recitation on the tag did not correctly show the purity, germination, or weed content of the shipment.

PAR. 12. That respondent has advertised and sold for more than one year last past, in interstate commerce, medium red or common clover, mammoth clover, alsike clover, sweet clover of different varieties, alfalfa, and timothy seed under the same grades and brand names as hereinbefore set forth; that it has made various statements regarding the quality of these seeds, as shown above, and more particularly the following: "We take special pride in having our clover seed free from foreign seeds, the berry being bright,

plump, and of strong germination." "We are right on the ground floor in the production of the most superior alfalfa seed that it is possible to grow. * * * We offer seed of only the highest quality in purity and germination, using the skill of a lifetime in producing a quality that is superior and unequaled by any other seed house"; and states that it contracts the best fields of sweet clover, and adds, "Beware of cheap seed, as it is apt to contain alfalfa seed or noxious weeds. When you buy sweet clover, you don't want alfalfa. Buy your seed from us as we are headquarters for the highest quality of seed and no one can sell to better advantage"; it states that it buys its timothy seed direct from the producer, claiming to put on the market a superior grade of seed, which is all recleaned and tested for purity and germination. That all these statements are false and misleading, in that, as hereinbefore set forth, all its brands and grades do contain noxious weed seed, and other impurities; that its clover seed of various kinds has been found not to consist of berries of strong germination, but in fact is in many cases a poor quality of seed, of low germinating power; that its alfalfa seed is not produced by it as intimated in its catalogue, but is purchased largely from other seed houses, and is not of the highest quality in purity or germination, but in fact is generally of medium or poor quality, of low germination, and contains the seed of various kinds of weeds, including noxious weeds, and other impurities; that its seed is not of the highest quality, free from alfalfa seed and noxious weed seed, but on the contrary contains the seed of alfalfa (in one instance to a total of 33.6 per cent) and other crop seed, various kinds of weed seed, including noxious weed seed, and other impurities; that respondent does not buy all its timothy seed direct from the producer, but purchases a large proportion of it from other seed houses, and that its timothy seed is not generally a superior grade of seed, but contains the seeds of various weeds, including noxious weeds, and in many cases is of low germination. That samples of many shipments, including all the above kinds of seed, made by respondent to purchasers in the States of Michigan, Minnesota, Wis-

consin, Illinois, Maryland, Virginia, and New York, were sent to the official seed analysts of those States, and were analyzed by them; that said shipments were shown on analysis to be generally low in purity, in one case as low as 59.74 per cent and in others as low as 63.07 per cent and 66.25 per cent, germinating power as low as 30 per cent, other crop seed content being as high as 23.68 per cent and 33.6 per cent; and weed-seed content as high as 13.69 per cent. All said samples were shown to contain the seed of weeds declared to be noxious by the pure-seed laws of the States above mentioned, in many cases in quantities beyond those allowed by the State laws, and, as a consequence, the shipments in such cases were condemned.

PAR. 13. That respondent has advertised and sold for more than one year last past, in interstate commerce, certain mixtures of grass seed, which it calls alsike and timothy mixed, red clover and timothy mixed, clover, alsike and timothy mixed, and Bonanza Mixture; that respondent does not sell said mixtures under the various grades and brand names under which it sells its other grass seed, as hereinbefore set forth, but only sells one grade of these mixed seeds; that alsike clover seed costs two or three times as much as timothy seed; that respondent in its catalogue states that its alsike and timothy mixture contains from 20 to 40 per cent alsike, the balance being timothy; that its clover and timothy mixed contains from 20 to 30 per cent clover, the balance being timothy; that its Bonanza Mixture is composed of 50 per cent legume crops, comprising 20 per cent red clover, 10 per cent alsike, 10 per cent white sweet clover, 10 per cent alfalfa, and the balance timothy; it claims that all its grass-seed mixtures have been thoroughly recleaned and are free from noxious weeds. That said statements are false and misleading in that said mixtures do not generally contain as large a percentage of alsike seed as represented by respondent, and its Bonanza Mixture does not contain the percentages of legume crops set forth by respondent, and said grass-seed mixtures all contain the seed of various kinds of weeds, and other impurities, and particularly the seed of noxious weeds, often in quantities sufficient to condemn the

shipment of seed for sale in the State into which it was shipped. That samples of many shipments of the above-named grass-seed mixtures, made by respondent to purchasers in the States of Michigan, Wisconsin, Virginia, Minnesota, Maryland, New York, and Illinois, were sent to the official seed analysts of those States, and were analyzed by them; that said shipments were shown on analysis to be generally low in purity, in one case as low as 75 per cent, germinating power of the various crop seed comprising the mixture as low as 25 per cent and 31 per cent, foreign crop seed amounting to as much as 12.90 per cent, and weed seed as high as 7.04 per cent, in some cases comprising 45 different kinds; in most cases the percentages of various seed as stated by respondent were found to be incorrect, being much lower than those given; all said samples were shown to contain the seed of weeds declared to be noxious by the pure seed laws of the States above mentioned, in many cases in quantities beyond that allowed by the State laws, and as a consequence the shipments in such cases were condemned in said States.

PAR. 14. That respondent admits that a portion of the grass seed which it purchases is a poor class of seed, which it mixes with higher-grade seed and sells as its intermediate grades. It claims that it attempts to eliminate noxious weed seed from these poorer grades before mixing, but there are certain noxious weeds which it is unable to remove from the grass seed because they are similar in size and weight. Respondent did not in its catalogue advise prospective purchasers that any of its brands contained weed seed, and did not show the weed-seed content on its tags attached to the bags of seed, as required by the seed laws of various States.

PAR. 15. That respondent has on numerous occasions had its attention called by State seed analysts to the fact that its shipments of seed into certain of the States did not comply with the pure-seed laws of said States, and it has on various occasions stated that it would comply with such laws. That complaints are now being received by State seed analysts as to the quality of seed being shipped by respondent into their respective States.

PAR. 16. That "Standard Seed Co." is a trade name adopted by respondent for its wholesale business, and that said "Standard Seed Co." is in fact under the same management and control and is in every respect identical with respondent, A. A. Berry Seed Co. That respondent advertises said "Standard Seed Co." as a separate and distinct company, and issues and circulates throughout the various States and Territories of the United States and the District of Columbia a catalogue under said trade name which is separate and distinct from that of the A. A. Berry Seed Co. That the seed sold under the name "Standard Seed Co." is supplied by the respondent and is not kept separate from its general stock; that respondent, A. A. Berry Seed Co. generally purchases practically its entire stock under its own name, making only occasional purchases under the name of "Standard Seed Co."

PAR. 17. That the catalogues issued by respondent under the name "Standard Seed Co." are distributed throughout the various States of the United States and the District of Columbia, and describe its seed in practically the identical words of respondent's regular catalogue. These catalogues call attention to the fact that the "Standard Seed Co.'s" seed is clean and pure; that it is thoroughly recleaned, and that that concern sells nothing but pure seed, which is all tested in its laboratory before being sent out; and that the purity and germination test of each lot of seed is put on a tag which is attached to each shipment so as to inform the purchaser of the quality of seed purchased.

PAR. 18. That respondent uses the said name "Standard Seed Co." in that branch of its business wherein it sells its seed to retail dealers and to certain agents, who sell by sample to the crop-growing public whereas, as above stated, under its own name its sales are made entirely by mail. That in selling seed in this way, under the name "Standard Seed Co.," respondent grades its clover seed of various kinds, alfalfa seed, timothy, and sweet clover seed into three qualities, which it calls "Good or Choice Grade," "Better or Fancy Grade," and "Best or Extra Fancy Grade." It claims that this seed also has been thoroughly recleaned,

and that its two best grades are free from noxious weed seed; it sells certain mixtures of seed under the names, alsike and timothy mixed, clover and timothy mixed, clover, alsike, and timothy mixed, and Bonanza Mixture; that these seed mixtures are not sold under the brands and grades above mentioned, but only one grade of said mixtures is sold; in the separate catalogue of "Standard Seed Co." it is stated that all its mixed seed has been carefully recleaned, is free from noxious weed seed, and is of high germination, and that its "Best Grade" is made from the cream of the crop. That these statements are false and misleading because all of said grades and brands have been found in fact to contain weed seed, including noxious weeds, in many cases in sufficient quantities to condemn the shipment for sale in the State into which shipped, and other impurities, and are not of high germination. That shipments of seed, including red clover, alsike clover, mammoth clover, alsike, and timothy mixed, clover and timothy mixed, clover, alsike, and timothy mixed, and Bonanza Mixture, have been made under the name "Standard Seed Co." to purchasers in the States of Wisconsin and New York, and samples of said shipments have been sent to the official seed analysts of said States, who have analyzed said samples; that shipments were shown on analysis to be generally low in purity, in one case containing only 75.48 per cent pure seed, germinating value of the crop seed comprising said shipments being generally poor, in one instance as low as 68 per cent, foreign crop seeds amounting to as much as 16.73 per cent in one case, and every sample showed various kinds of weed seed, in one instance showing as many as 42 different varieties. All said samples were shown to contain the seed of weeds declared to be noxious weeds by the pure seed laws of the said States mentioned above, and in a majority of cases in quantities beyond that allowed by the State laws, and as a consequence the shipments in such cases were condemned in said States.

PAR. 19. That the complaint in this case was issued January 7, 1920, and it was admitted by respondent's attorney in open hearing at the final submission of this case to the

Commission and in respondent's amended answer that respondent's catalogue for the year 1920 was issued and mailed to the public some time about the middle of January, 1920.

PAR. 20. That the effect of the misrepresentations above set forth may be to mislead the public and to embarras competitors of respondent in the conduct of their business.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings of facts in paragraphs 4 to 18, inclusive, and each and all of them are, under the circumstances therein set forth, 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.

The Federal Trade Commission having issued and served its complaint herein, and the respondent having entered its appearance by Jeffery, Campbell & Clark, its attorneys, and having filed its answer and amended answer to said complaint, and the attorneys for both parties having thereafter signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said agreed statement of facts should be taken as the evidence herein and in lieu of testimony, and waiving any and all right to require the introduction of testimony, and agreeing that the Federal Trade Commission should forthwith proceed upon said agreed statement of facts to make and enter its report stating its findings as to the facts and its conclusions and its order disposing of this proceeding, and the attorneys for both parties having filed briefs, and the Commission having heard the arguments of counsel on the merits of the case and having duly considered the record and being fully advised in the premises, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26,

1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties ,and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, that the respondent, A. A. Berry Seed Co., its officers, agents, representatives, servants, and employees, cease and desist from:

(1) Publishing or circulating under its own name or the name "Standard Seed Co." any catalogues or other advertising matter containing false or misleading statements as to the character or quality of the seed sold by it, and more specifically the following:

(*a*) Any false or misleading statement concerning the freedom of respondent's seed from noxious weed seed or other foreign matter.

(*b*) Any false or misleading statement respecting the germinating qualities of respondent's seed.

(*c*) Any false or misleading statement as to the source from which respondent obtains its seed.

(*d*) Any false or misleading statement as to the conformity of respondent's World Brand Seed to the standards of any State.

(*e*) Any false or misleading statement as to the manner in which respondent marks shipment of its seed.

(*f*) Any false or misleading statement as to the quantity or quality of the constituent elements of any of respondent's seed mixtures.

(2) Selling or offering for sale any seed under the name "Standard Seed Co." without fully disclosing to the trade and purchasing public that said "Standard Seed Co." is one and the same as respondent, A. A. Berry Seed Co.

And it is further ordered, that said respondent, A. A. Berry Seed Co., shall within 60 days from 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.

KINNEY-ROME CO.

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

Docket 226.—June 3, 1920.

SYLLABUS.

Where a corporation engaged in the sale of bed springs and kindred products, gave and offered to give to employees of retailers, through arrangement with the retailers but without the knowledge of their customers, premiums such as necktie sets, knife and chain sets, umbrellas, watches, diamonds, and other personal property as an inducement for them to push the sale of its goods:

Held, that such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reasons to believe, from a preliminary investigation made by it, that the Kinney-Rome Co., 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 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 Kinney-Rome Co., is a corporation organized, 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 said State, now and for more than one year last past engaged in manufacturing and selling bed springs and similar products throughout the States and Territories of the United States and the District of Columbia, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other per-

sons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent for more than one year last past with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of bed springs and kindred products in interstate commerce has given and offered to give premiums, consisting of necktie sets, knife and chain sets, umbrellas, watches, diamonds, and other personal property, to the salesmen of merchants handling the products of the respondent and those of its competitors as an inducement to influence them to push the sales of respondent's products to the exclusion of the products of its competitors.

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 respondent, the Kinney-Rome Co., 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 that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by Colin C. H. Fyffe, its attorney, and having filed its answer admitting certain of the matters and things therein as alleged and denying others, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony, and the attorneys for the Commission and the respondent having submitted briefs as to the

law and facts, the Commission, having considered the same and being duly advised in the premises, now makes and enters this its report, stating its findings as to the facts and its conclusions as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State.

PAR. 2. That the respondent is and for more than two years last past has been engaged in selling bed springs and kindred products throughout the States and Territories of the United States, and the District of Columbia, in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the general custom in this industry is the distribution of the product to the general public through retail dealers who usually employ salesmen to wait upon the trade and display to customers the different grades and kinds of the commodity handled by the retailer.

PAR. 4. That the respondent sells to the retail trade several kinds of bed springs varying in price, the most expensive of which has been given the trade name of "De Luxe," and in the course of selling this type of bed springs to retail dealers throughout the States and Territories of the United States, and the District of Columbia, the respondent sought to obtain the preference for the sale of this product by the retailer to the general public over the products of its competitors, and in pursuance thereof adopted and used a plan of giving premiums, such as necktie sets, knife and chain sets, umbrellas, watches, diamonds, and other personal property to salesmen of retailers handling the products of the respondent and those of its competitors when such salesmen have been instrumental in making a sale of the respondent's "De Luxe" springs.

PAR. 5. That these premiums are given with the knowledge and consent and through arrangements with the retail dealers handling the respondent's products, but the salesmen

of the respondent's customers do not explain to the persons to whom they sell the "De Luxe" spring that they are offered and given premiums by the manufacturers of the spring on such sales.

CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, under the circumstances set forth, are 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, and the respondent, the Kinney-Rome Co., having entered its appearance by Colin C. H. Fyffe, its attorney, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it is stipulated and agreed that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts and its conclusions and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

It is ordered, That the respondent, the Kinney-Rome Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly giving or offering to give premiums, such as necktie sets, knife and chain sets, umbrellas, watches, diamonds, or other personal prop-

erty to salesmen or employees of merchants handling the products of the respondent and those of one or more of its competitors where such salesmen or employees have been instrumental in making a sale of the respondent's products.

It is further ordered, That the respondent make and file with the Commission, not later than the 9th day of September, A. D. 1920, a report in detail of the manner and form in which this order has been conformed to.

FEDERAL TRADE COMMISSION

v.

GALENA SIGNAL OIL CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE OBLIGED VIOLATION OF SECTIONS 2 AND 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 24.—June 29, 1920.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of lubricating oils, greases, and compounds to railroad companies operating approximately 74 per cent of the entire railroad mileage of the United States, and possessing exact information of the detailed cost to each of said companies of the consumption of lubricants by locomotives, passenger cars, and freight cars per 1,000 miles run,

Entered into contracts with different companies which provided—(*a*) that said corporation should supply and the company purchase all needed lubricants at an invoice price to be uniform to all; but the total cost thus incurred to be subject to rebate or refund in the event that it should prove to exceed certain guaranteed unit costs per thousand miles run by different classes of equipment, which costs were neither uniform as to all companies nor so fixed as to yield a uniform net price per gallon or per pound from each company; such rebates or refunds being conditioned in most of the contracts upon exclusive use of the corporation's lubricants; (*b*) that, in many cases, any saving upon any class or classes of equipment should not be set off against the excess cost upon any other class or classes, with an additional resulting advantage thereby in such cases to the company; and (*c*) that, in many contracts, should the cost at invoice price fall below a point called the "measure figure," then the guaranteed cost should be further reduced upon a sliding scale, usually one-half the difference between

the actual cost and the measure figure, which bore a substantially different ratio to the guarantee figure in the case of different companies;

With the result that in many cases the total cost of lubricants to a company was much less than the invoice cost; that the net cost per gallon or per pound varied greatly with different companies; that in many cases the total actual cost was much less than the total actual cost of many other companies consuming an equal or smaller quantity of the various kinds of lubricants per thousand miles run upon their several classes of equipment; and that in order to obtain any possible refunds the different companies uniformly purchased from said corporation all the lubricants required by them:

Held, (*a*) That the effect of such contracts and the practices thereunder was, and might be, to substantially lessen competition and tend to create a monopoly in the sale to railroad companies of lubricating oils, greases, and compounds;

(*b*) that such discrimination in price between different railroad companies, under the circumstances, constituted a violation of section 2 of the act of October 15, 1914;

(*c*) that such contracts and the sales made thereunder, and the methods and practices set forth constituted, under the circumstances, a violation of section 3 of the act of October 15, 1914:

(*d*) that the use of such contracts and practices constituted, under the circumstances set forth, an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Galena-Signal Oil Co., hereinafter referred to as the respondent, has been and is 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, 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:

I.

PARAGRAPH 1. That the respondent, the Galena-Signal Oil Co., 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 Franklin, said State, and is now, and has for more than two years last past, engaged in the manufacture and sale in commerce among the various States and Territories of the United States and the District of Columbia, of lubricants consisting of oils, greases, and other ingredients used by railroads for lubricating rolling stock, and a cooling compound used by them for preventing or remedying hot boxes on said railroad rolling stock.

PAR. 2. That the respondent, with the purpose, intent, and effect of stifling and suppressing competition and of building up and maintaining a monopoly in the manufacture and sale of lubricating oils and greases in interstate commerce, for many years last past has sold, and is now selling, lubricating oils and greases to railroad companies under a system or method of contracting, whereby it agrees to sell and deliver to the purchaser all of the lubricants, which such purchaser may require in the operation of its rolling stock, at certain fixed prices per gallon or per pound, guaranteeing to such purchaser that in the exclusive use of respondent's lubricants the average cost per thousand miles run for lubricating certain specified classes of its equipment shall not exceed fixed and definite amounts, and agreeing in the event that the cost of lubricants used exceeds, at the contract or invoice price, such guaranteed cost, to refund or rebate the excess to the purchaser; that the respondent has for many years last past, and is now, paying or refunding such excess cost to its customers. The effect of this system of selling and the payment of rebates or refunds thereunder has been, and is, to prevent competitors of the respondent from selling lubricants to any railroad company which purchases to any extent from the respondent company, and thus to induce or procure the exclusive patronage of such companies. Under this system of selling, the respondent has also for many years last past, and does now, arbitrarily so adjust or fix the guarantees of cost of lubrication per thousand miles run, contained in its contracts with various railroads, as to require the respondent to pay to certain railroads varying refunds or rebates from the invoice prices paid by such roads, with

the result that the respondent has discriminated, and does discriminate, in the net price per gallon or per pound charged various railroads purchasing lubricating oils and greases from it.

II.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Galena Signal Oil Co., hereinafter referred to as respondent, has violated, and is violating, the provisions of section 2 and section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, the Galena Signal Oil Co., 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 Franklin, said State, and is now, and has for more than two years last past, engaged in the manufacture and sale in commerce among the various States and Territories of the United States, and the District of Columbia, of lubricants consisting of oils, greases, and other ingredients used by railroads for lubricating rolling stock, and a cooling compound used by them for preventing or remedying hot boxes on said railroad rolling stock.

PAR. 2. That the respondent for several years last past, in the course of interstate commerce, in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of lubricant, which said lubricant is sold for use, consumption, or resale within the United States and the Territories thereof, and the District of Columbia, and that the effect of such discrimination may be and is to substantially lessen competition or tend to create a monopoly in the business of manufacturing and selling lubricants used by railroads in the operation of their rolling stock.

PAR. 3. That the respondent for several years last past in the course of interstate commerce, in violation of section 3 of the Clayton Act, has sold and made contracts for sale of large quantities of lubricants used by railroads in the operation of their rolling stock for use and consumption throughout the United States, the Territories thereof, and the District of Columbia, and has fixed and is now fixing the price charged therefor or discount from, or rebate upon such price on the condition, agreement, or understanding that the purchaser thereof shall not use the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondent, and that the effect of such sales and contracts of sale or such conditions and agreements or understandings may be and is to substantially lessen competition and to tend to create a monopoly.

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 respondent, Galena Signal Oil Co., 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 has been and is violating the provisions of sections 2 and 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 in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Frank L. Crawford, Esq., its attorney, and having duly filed its answer, admitting certain of the allegations of said complaint and denying certain others thereof, and containing certain allegations as affirmative defense, and the Commission having offered testimony in support of the charges

of said complaint, and the respondent having rested its case at the close of the Commission's case, and counsel for both parties having waived the filing of briefs and hearing of argument, and the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Galena Signal Oil Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, pursuant to an agreement of consolidation and merger, made September 30, 1901, between the Galena Oil Co. and the Signal Oil Co., both corporations duly organized and existing under and by virtue of the laws of the State of Pennsylvania, whereby said respondent, the Galena Signal Oil Co. succeeded to the rights, privileges, and franchises of the Galena Oil Co. and the Signal Oil Co., subject to all of the restrictions, disabilities, and duties of each of the said corporations so consolidated. That the purposes for which the Galena Oil Co. was organized and the character of the business it was empowered to do was manufacturing lubricating oils, and particularly the oil known as Galena oil, selling its own manufactured products, purchasing materials used in said manufacture, purchasing and owning the real estate and buildings necessary in said manufacture and doing all things necessary to carry on said manufacture and to market the products; that the purposes for which the Signal Oil Co. was organized and the powers which under its charter it was authorized to exercise and the business to transact was manufacturing valve and Signal oils, and particularly oils known as Perfection valve oils and Signal oils, selling its own manufactured products, purchasing materials used in said manufacture, purchasing and owning real estate and buildings necessary in said manufacture, and doing all things necessary to carry on said manufacture and to market the products.

PAR. 2. That respondent since its organization has continued to carry on the business, among others, of manufacturing and selling to railroad companies certain lubricating oils,

greases, and compounds. That before and since the service of the complaint herein respondent was and has been selling its said lubricating oils, greases, and compounds to railroad companies owning and operating approximately 74 per cent of the entire railroad mileage of the United States.

PAR. 3. That in the course of its said business of manufacturing and selling its said products, the respondent has purchased and transported its raw materials into and through various States of the United States, and has sold and shipped its refined and manufactured products into and through various States and Territories of the United States and the District of Columbia to various railroad companies having their respective offices and places of business, and their respective lines of railroads and receiving points for the said lubricating oils, greases and compounds in the various States and Territories of the United States and the District of Columbia.

PAR. 4. That during the four years last past up to the commencement of this proceeding and prior thereto, respondent in the course of its said business has entered into certain contracts with various railroad companies to which respondent sells its said lubricating oils, greases, compounds, and Signal Oil in and by which said respondent has agreed to sell and deliver to said railroad companies respectively all of said lubricating oils, greases, compounds, and Signal oil which said railroad companies respectively may require for their use upon their respective locomotives, passenger cars, and freight cars in use upon their present mileage or any additional mileage, and said railroad companies have agreed to purchase all of the oils, greases, and lubricating compounds which they respectively may require for such purposes from respondent. That the said contracts have been and were made and entered into in most cases upon a standard printed form. That certain contracts with certain railroad companies have been entered into upon special forms which differed in certain particulars from said standard printed forms. That in and by each and all of said contracts entered into as aforesaid respondent has agreed to sell and deliver, and does agree to sell and deliver, to the said

railroad companies respectively its lubricating oils, greases, and compounds at the uniform equal invoice prices prevailing at the date of said contract in all cases and in each and all of said contracts it was and is provided that:

> The first party agrees that should a reduction be made to any other railroad in the invoice prices named in said section 1 (excepting reductions due to decreases in freight rates) for the same oils or greases during the period covered by this contract, the second party hereto is to receive the benefit of a like reduction for the remaining period of this contract.

That respondent in each and all of the said contracts has agreed to guarantee and does agree to and does guarantee that the cost to the said railroad companies respectively for lubricating their respective locomotives, passenger cars, and freight cars per thousand miles run shall not exceed a certain specified amount for locomotives, a certain specified amount for passenger cars, and a certain specified amount for freight cars.

PAR. 5. That it has been the practice of the respondent for many years to require, and it is expressly provided in most of the contracts entered into by the respondent with the railroad companies respectively that said railroad companies shall furnish to respondent monthly statements showing the actual amount of lubricating oils and greases and lubricating compounds consumed per thousand miles run on the locomotives, passenger cars, and freight cars of said respective railroad companies, with a detailed statement showing the invoice prices of the lubricants consumed by each class, the total number of miles run by each class of equipment, and the number of miles per pint; and the respondent has at all times during the four years last past and prior thereto had full and complete statements and statistics showing the actual cost of lubricating at invoice prices, the several classes of equipment of the railroad companies respectively and the actual amount of the different kinds of lubricating oils and greases and lubricating compounds consumed per thousand miles run by the various classes of equipment of said railroad companies respectively.

PAR. 6. That the said guaranteed costs per thousand miles run for the different classes of equipments specified in the

several contracts entered into by the respondent up to the commencement of this proceeding as aforesaid, were not and are not uniform in the case of all railroad companies, but the ratio between the said guaranteed costs per thousand miles run and the actual cost per thousand miles run at the uniform invoice price has varied and the said guaranteed costs per thousand miles run for the several classes of equipment have not been fixed upon any basis or in any manner whereby the respondent would receive from all railroad companies a uniform net amount per gallon or per pound for the lubricants sold by it to said railroad companies respectively.

PAR. 7. That in said contracts entered into as aforesaid by the respondent with said railroad companies respectively respondent has agreed and does agree to refund to the said railroad companies respectively the difference, if any, between the total cost at the uniform invoice prices of the lubricants, oils, greases, and lubricating compounds required per thousand miles run for the several classes of equipment and the total guaranteed cost per thousand miles run. That under the said contracts the respondent has paid and given and does pay and give to various railroad companies the respective refunds aforesaid, whereby the cost to the railroad companies for lubricating their several classes of equipment per thousand miles run varies at different ratios to the cost at uniform invoice price of the several kinds of lubricating materials actually consumed per thousand miles run.

PAR. 8. That the quantity of lubricants per thousand miles run necessary for the different classes of equipment varies in the case of different railroad companies; but in many cases, under the contracts aforesaid, respondent has offered and given, and does offer and give, to railroad companies guaranteed costs per thousand miles run for the several classes of equipment, such that the total cost to the railroad company of lubricating the said equipment was and is much less than the cost at invoice prices of the lubricants so consumed, and such that in many cases the total actual cost of lubricating the said equipment was and is much less than the total actual cost in the case of many other railroads which consumed an

equal or a smaller quantity of the various kinds of lubricants per thousand miles run upon their several classes of equipment.

PAR. 9. That during the four years last past up to the commencement of this proceeding, and prior thereto, respondent by the contracts aforesaid has agreed to offer and give, and has offered and given, to various railroad companies certain guaranteed costs per thousand miles run, as a result of which the net cost per gallon or per pound for the various kinds of lubricants furnished and delivered by said respondent has varied greatly in the case of the different railroad companies.

PAR. 10. That the guaranteed cost in each service is computed by multiplying the number of miles run by the guaranty, and that the sum of the guaranteed costs for each class of equipment is the total guaranteed cost. That the total invoice cost is the amount paid by the railroad companies respectively, unless the total guaranteed costs is a smaller sum, in which case the latter is paid.

PAR. 11. That in many cases, by the contracts aforesaid, respondent has offered and given, and does give to railroad companies an additional advantage in that the said respondent has agreed and does agree that in the event of any saving upon any class or classes of equipment, the same shall not be set off against the excess cost upon any other class or classes, each class being treated separately.

PAR. 12. That during the four years last past, up to the commencement of this proceeding, and prior thereto, the ratio between the invoice prices specified in the said several contracts and the total guaranteed costs actually paid by the several railroad companies has varied substantially.

PAR. 13. That in most of the said contracts entered into by the respondent with said railroad companies respectively during the four years last past, up to the commencement of this proceeding, and prior thereto, it is provided, among other things, that the said guaranteed costs per thousand miles run for the several classes of equipment aforesaid shall be allowed and given only in consideration of the exclusive use by said railroad companies respectively of the lubricants furnished by the respondent, for such purposes. That pur-

suant to said guarantee provisions, and in order to obtain any refunds provided for thereby, the railroad companies with which respondent has respectively entered into guaranty contracts have uniformly purchased from the respondent all lubricating oils and greases and lubricating compounds required for the lubrication of their respective several classes of rolling stock and have not purchased from any competitor of the respondent any of the lubricating oils and greases or lubricating compounds required for the lubrication of their said rolling stock.

PAR. 14. That in many of the contracts entered into by the respondent with various railroad companies, it has been expressly provided that in case the actual cost at uniform invoice prices falls below a certain figure, termed the "measure figure"—usually the previous actual cost at invoice prices—the guaranteed cost specified in said contracts should be further reduced upon a sliding scale, usually measured by one-half the difference between the measure figure and the actual cost. The ratio between the guaranty figure and the measure figure substantially varied in the case of different railroad companies.

PAR. 15. That many of the contracts, made and entered into by the respondent with various railroad companies, have been expressly limited in duration, but contain further provisions that they shall continue in force and effect unless terminated by either party upon different periods of notice.

CONCLUSIONS.

That by reason of the aforesaid contracts entered into up to the commencement of this proceeding, and the terms and conditions thereof, and by reason of the varying ratio between the said guaranteed costs and the said actual costs at uniform invoice prices, the net cost per gallon or per pound for the various kinds of lubricants furnished and delivered by said respondent has varied greatly in the case of different railroad companies, with the result that there has been discrimination in price between different purchasers of the commodities manufactured and sold by respondent in interstate commerce.

That the respondent has made contracts for the sale of and has sold under such contracts commodities manufactured by it and has fixed prices therefor, and discounts from and rebates upon such prices, on the conditions, agreements, or understanding that the purchasers thereof under such contracts should not use or deal in the goods, wares, merchandise, or other commodities of a competitor or competitors of the respondent.

That the effect of such contracts for sale and the sales made thereunder, and the methods and practices hereinbefore set forth, is and may be to substantially lessen competition and tend to create a monopoly in the line of commerce in which the respondent is engaged.

That such contracts for sale and the sales made thereunder and methods and practices hereinabove set forth, constitute a violation of section 2 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."

That such contracts for sale and the sales made thereunder and methods and practices hereinabove set forth constitute a 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."

That the methods and practices of the respondent hereinabove set forth, constitute unfair 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.

The Federal Trade Commission having issued and served its complaint herein wherein it is alleged, among other things, that it had reason to believe that the above-named respondent, Galena Signal Oil Co. " has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved Septem-

ber 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,'" and "has violated and is violating the provisions of sections 2 and 3 of the act of Congress, approved October 15, 1914, entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,'" and that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Frank L. Crawford, Esq., its attorney, and having duly filed its answer, admitting certain of the allegations of said complaint and denying certain others thereof, and containing certain allegations as affirmative defense; and the Commission having offered testimony in support of the charges of said complaint, and the respondent having rested its case at the close of the Commission's case and counsel for both parties having waived the filing of briefs and hearings of argument, and the Commission having duly considered the record and being fully advised in the premises, and having made and filed its report and findings as to the facts and conclusions, which report, findings, and conclusions are hereby referred to and made a part hereof: Now, therefore,

It is ordered, That respondent, Galena Signal Oil Co., shall forever cease and desist:

(1) From entering into or making any contract or contracts with any railroad company wherein or whereby such railroad company is permitted, allowed, or enabled to purchase from respondent the lubricating oils, greases, and compounds sold by respondent at prices lower than the prices offered and given by respondent to other railroad companies purchasing the same grade of products at the same period of time.

(2) From selling or offering to sell to any railroad company the lubricating oils, greases, and compounds sold by it at prices lower than those offered and given to other railroad companies purchasing the same grade of products at the same period of time.

(3) From making or entering into any contract or contracts with any railroad company wherein and whereby the said respondent agrees to or does guarantee to such railroad company that the cost of lubricating said company's locomotives, passenger cars, and freight cars shall bear a smaller ratio to the actual cost at uniform invoice price than the ratio between the guaranteed cost and actual cost at invoice price, in the case of other railroad companies purchasing the same grade of products from respondent.

(4) From directly or indirectly discriminating in price between different purchasers of the same grade of commodities sold by respondent, except that existing contracts which are specifically shown in the schedule attached hereto shall not be affected by this paragraph or by paragraph 2 hereof until they expire or may be terminated by respondent, nor shall this paragraph nor paragraphs 1 or 2 be construed as prohibiting the use of a group of alternative plans for the purchase of commodities uniformly submitted to all prospective customers and resulting in no unlawful discriminations.

(5) From making or entering into any contract or contracts with any railroad company wherein or whereby the said respondent agrees to or does guarantee to said railroad company, a maximum cost of lubrication per thousand miles run, or a maximum cost of lubrication based on any similar standard of measure, for locomotives, passenger cars, and freight cars, in consideration that the said railroad company shall purchase and use exclusively the lubricating products sold by respondent.

(6) From making or entering into any contract or contracts with any railroad company wherein or whereby the respondent agrees to or does guarantee to said railroad company a specified cost of lubrication per thousand miles run, or a specified cost of lubrication based on any similar standard of measure, on the condition, agreement, or understanding that the said rail-

road company shall not buy or use the goods, wares, merchandise, or other commodities of a competitor or competitors of the respondent.

(7) From continuing beyond the period at which any contracts may be terminated by respondent on notice, and from renewing or extending any such contracts wherein or whereby it is provided that the railroad companies severally making said contracts shall purchase and use exclusively the lubricating oils, greases, and compounds sold by respondent.

(8) From doing anything having the same effect as that resulting from the practices herein prohibited, and by reason of which this order is made.

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 it is further ordered, That under and by virtue of the authority conferred on the Commission by paragraph B of section 6 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, that the respondent, Galena Signal Oil Co., shall, within 60 days report in writing to the Federal Trade Commission, fully setting forth the nature of the changes made in the conduct of its business, with respect to the subject matter involved in this order to cease and desist; and shall set forth in such report, in complete detail, the plan or plans adopted by respondent for the sale and distribution of its lubricating oils, greases, and compounds.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Dates of orders.	Docket Nos.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1919.						
July 18	127	Mecanno Ltd., Mecanno Co., Inc.	Building toys	Threatening competitors	Answer	No public interest.
July 18	252	Mercury Tire Co., Inc.	Used automobile tires	Misbranding; false and misleading advertising.	do	Respondent dissolved and ceased to do business.
Sept. 24	245	The Harrison Specialty Co.	Plugs for leaking boiler tubes.	Bribery	Answer and trial	Dismissed without prejudice; charge not sustained.
Sept. 24	298	National Oil Products Co.	Oil, soap, and grease products.	do	do	Do.
Oct. 14	242	Niles Normalizing Machine Co.	Flesh-reducing apparatus.	Threatening competitors	do	Do.
Nov. 17	39	The Coca Cola Co.	Beverage sirup	Espionage with respect to competitors' business secrets; refusal to sell to dealers not agreeing not to handle competitors' products; resale price maintenance; system of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products; exclusive contracts.	Answer and stipulation	Dismissed without prejudice; no public interest.
Nov. 17	144	Weyl-Zuckerman & Co.	Farm products and foodstuffs.	Securing preferential treatment in the furnishing of freight cars by falsely representing shipments for war use by Government.	Answer	No present public interest appearing.
Nov. 17	145	Consolidated Rendering Co., New Haven Rendering Co., Atlantic Packing Co., and L. T. Frisbie Co.	The rendering business	Pushing prices competitors' raw materials to prohibitive figures.	do	Dismissed without prejudice; no reason assigned.
Nov. 17	198	Closset & Devers, Inc.	Coffee	Resale price maintenance	No answer filed, or hearing had.	Charge not sustained.
Nov. 17	199	National Grocery Co.	do	do	do	Do.
Nov. 17	200	The Rogers Co.	do	do	do	Do.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED—Continued.

Dates of orders.	Docket Nos.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1919.						
Nov. 17	201	Schwabacher Bros. & Co., Inc.	Coffee	Resale price maintenance	No answer filed, or hearing had.	Charge not sustained.
Nov. 17	202	Seattle Grocery Co.	do	do	do	Do.
Nov. 17	203	Washington Retail Grocers' & Merchants' Association.	do	do	do	Do.
Nov. 17	204	Commonwealth Color & Chemical Co. and Herbert L. Wittnebel.	Colors, chemicals, dyestuffs, and similar products.	Bribery	Answer and trial	Do.
Nov. 17	221	Vapo-Cresolene Co.	Proprietary medicine	Resale price maintenance	Answer	Do.
Nov. 17	249	The Corcoran Manufacturing Co.	Automobile radiators	Simulation of competitor's product, so as to deceive purchasers.	do	No reason assigned.
Nov. 17	302	North American Construction Co.	Lumber and building materials (cut and prepared for standardized houses).	False representations as to respondent's and its competitors' prices and products.	do	Dismissed without prejudice; respondent discontinued business.
Nov. 19	84	Cutler Mail Chute Co.	Mail chutes and boxes	Selling below cost	Answer and trial	Practices of respondent shown by testimony not prohibited by Federal Trade Act.
Nov. 24	130	Gilbert & Barker Manufacturing Co.	Automatic measuring oil pumps, tanks, and other outfits, and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids.	Misrepresenting competitors' products and prices thereof; bringing about and attempting to bring about cancellation of orders for competitors' products; false representations by respondent's agents that they were also agents of competitors; price discrimination.	Answer	No reasons assigned.
Nov. 24	136	American Oil Tank & Pump Co.	do	Bringing about and attempting to bring about cancellation of orders for competitors' products.	do	New evidence.

Nov. 24	138	Tokheim Manufacturing Co.	.....do.....	.....do.....	.....do.....	Do.
Nov. 24	139	Guarantee Liquid Measure Co.	.....do.....	Bringing about and attempting to bring about cancellation of orders for competitors' products; misrepresenting competitors' products.	.....do.....	Do.
Nov. 29	283	Webb-Jensen-Davis Co., Inc.	Printing ink and kindred products.	Bribery.....	.....do.....	Charge not sustained.
Dec. 31	83	American Mailing Device Corporation.	Mail chutes and boxes....	Selling below cost.....	Answer and trial.....	Practices of respondent shown by testimony not prohibited by Federal Trade Act.
Dec. 31	371	Visigraph Typewriter Manufacturing Co., Inc.	Typewriters.....	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products.	Answer.....	Respondent dissolved and ceased to do business.
1920.						
Jan. 29	445	Louisville Soap Co., Inc...	Soap.....	Guarantee against decline...	.....do.....	Do.
Jan. 29	507	A. Anagnostopulos, trading under the name and style of Arabian Coffee Co.	Coffee and tea.....	Exclusive and tying contracts.	No answer or trial.....	Respondent gone out of business; successor not indulging in practice complained of.
Feb. 5	278	Tokheim Oil Tank & Pump Co.	Automatic measuring oil pumps, tanks, and other outfits, and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids.	Enticing competitors' employees.	Answer.....	Charge not sustained.
Feb. 5	416	Jay Printing Ink Co., Inc.	Printing ink and kindred products.	Bribery.....	Answer and trial.....	Do.
Mar. 3	211	The Henry-Miller Foundry Co.	Furnace casings, gas rings, and similar fittings.	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products.	Answer.....	Interstate commerce not involved.

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED—Continued.

Dates of orders.	Docket Nos.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
Mar. 25	128	The Vaudeville Managers Protective Association, The National Vaudeville Artists, Inc., The United Booking Offices (The B. F. Keith Vaudeville Exchange), Vaudeville Collection Agency, E. F. Albee, Sam A. Scribner, Marcus Loew, Martin Beck, B. S. Moss, and Sime Silverman.	Vaudeville business.....	Making membership in National Vaudeville Artists condition precedent to employment; circumventing New York law limiting theatrical employment agencies to 5 per cent; requiring actors to advertise in publication owned by one of respondents; conspiring to make and publish black lists of actors not in good standing.	Answer and trial.....	Violation of Federal Trade Commission Act, or secs. 2, 3, 7, and 8 of Clayton Act do not appear.
Apr. 7	265	Butterick Co., Federal Publishing Co., Standard Fashion Co., Butterick Publishing Co., and New Idea Pattern Co.	Manufacture of paper dress patterns and publication of periodicals and catalogues describing garments made therefrom.	Resale price maintenance; exclusive and tying contracts.	.....do.....	Dismissed, on Commission's motion, without prejudice to right of Commission to issue another complaint with respect to same matter, directed to such respondents as Commission may elect.
May 7	5	The Shredded Wheat Co..	Shredded wheat biscuit...	Exclusive contract with only concern making machinery capable of manufacturing respondent's product, to prevent said concern manufacturing for competitor; espionage upon business of competitor; misrepresenting quality of competitor's product; threatening customers of competitor; prosecution of vexatious suit with	.....do.....	No reasons assigned.

				wide publicity; endeavoring to prevent competitor from securing advertising space.		
May 13	345	New England Bakery Co.	Bread	Giving free loaves to retailers for distribution to customers.	Answer	Dismissed without prejudice; no reasons assigned.
May 20	92	Standard Oil Co. of New York and Magnolia Petroleum Co.	Petroleum products	Acquisition of large amount of stock in competing corporation where the effect may be to substantially lessen competition or tend to create a monopoly.	Answer and trial	No reason assigned.
May 20	546	National Wire Wheel Works, Inc.	Wire wheels for automobiles.	False representations as to possession of certain patents, whereas patents only applied for.	Answer	Advertisement published but once, and promptly discontinued upon notice. Public interest not sufficient to warrant order to cease and desist.
May 25	156	Purity Preserving Co. and R. J. Meguiar Co.	Tomato catsup	Failure on part of one of respondents to fill contracts after sharp rise in price, and offer by second respondent, composed substantially of same officers, directors, and stockholders, of catsup made by first corporation's plant, and employees at market prices in competition with manufacturers in active competition with first corporation.	do	Dismissed without prejudice.
June 3	330	Richardson Lubricating Co.	Petroleum products	Leasing devices used in connection with respondent's products at a nominal consideration, under circumstances tending to cause dealers to purchase respondent's products largely or exclusively.	Answer and stipulation	Practice abandoned.

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CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED—Continued.

Dates of orders.	Docket Nos.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
June 8	31	National Biscuit Co.....	Uneeda biscuits, and other bakery products.	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products; price discriminations; contracts for important advertising space or displays, reserving right to cancel at end any month if advertisement of products of competitors shown.	Answer and trial.....	Dismissed without prejudice to right of Commission to rule against cumulative discount principle in application to a different state of facts, it appearing that respondent confines its calculations to periods not exceeding one month, so that the tendency to create an exclusive dealing relationship and restrict competition is negligible.
June 8	443	David D. Levitt, doing business under the trade name and style of The Sport Shop.	Fishing tackle, guns, rifles, ammunition, camping and outing supplies, and similar products.	Simulation of firm name of competitor.	Answer and stipulation.	No reasons assigned.
June 14	514	Albert H. Harman and Horace C. Klein, partners, styling themselves the Webb Publishing Co.	Agricultural journals.....	Price discriminations (for advertising space).	Answer.....	Dismissed without prejudice. Interstate commerce not involved.
June 18	33	American Radiator Co....	Radiators.....	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products.	.....do.....	Charges not sustained.

APPENDIX I.

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS, WITH ANNOTATIONS.

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.

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[1] The annotations are from decisions handed down before July 1, 1920, on petitions to review orders of the Commission, except in the *Nulomoline*, *Basic Products*, and *Maynard Coal Co.* cases, in which injunctions were sought against the Commission, in the first to prevent the taking of certain testimony, and in the last two to prevent the requiring of certain reports.

With respect to the petitions on decisions to review it should be noted that in the case of *Beech-Nut Packing Co.* v. *Federal Trade Commission*, 264 Fed. 885, decided adversely to the Commission, petition for certiorari was granted by the United States Supreme Court June 1, 1920.

With respect to the *Basic Products* and *Maynard Coal Co.* cases, involving the requiring of reports by the Commission under section 6, under the circumstances there concerned, it should be noted with respect to the general question involved, that after decision in the case last referred to

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION—Continued.

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.

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.

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 commission shall appoint a secretary, who shall receive a salary of $5,000 a year, payable in like manner, and it

Appointment of secretary. Salary, $5,000.

(on motion for temporary injunction restraining the Commission from requiring reports under section 6), a temporary injunction restraining the Commission from requiring such reports was secured from the Supreme Court of the District of Columbia in the case of *Claire Furnace Co. et al.* v. *Federal Trade Commission* (June 19, 1920. No opinion); that such injunction also had the effect of staying certain mandamus proceedings against two of the petitioners in the *Claire Furnace* case, theretofore instituted by the Attorney General under section 9, at the request of the Commission, to compel the companies in the two cases to file reports previously demanded under section 6 (*United States* v. *Bethlehem Steel Co.*, petition filed June 4, 1920, Eastern District of Pennsylvania, and *United States* v. *Republic Iron and Steel Co.*, petition filed June 7, 1920, District of New Jersey); that the answer of the Commission in the *Claire Furnace* case prayed in the alternative form that (1) the bill be dismissed; that (2) the bill be dismissed as to the two petitioners above referred to (the defendants in the two mandamus proceedings); that (3) the temporary restraining order and preliminary injunction be modified so as to clearly exclude the prosecution of such mandamus proceedings by the Attorney General against the two defendants; and that at this writing (Sept. 20, 1920), neither the *Maynard Coal* case, *Claire Furnace* case, nor mandamus proceedings have been heard. In this general connection (injunctions sought to restrain the Commission from proceeding under the act) reference should also be made to the case of *T. C. Hurst & Son* v. *Federal Trade Commission* (Sept. 20, 1920, D. C. for E. D. of Va., before Judge Waddill, not yet reported), in which the Court sustained the constitutionality of the act and refused the injunction.

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.

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.

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.

Until otherwise provided by law, the commission may rent suitable offices for its use.

Commission may rent suitable offices.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

Auditing of accounts.

63d Cong., 2d sess.) ; report of Senator Summins 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, 12873–12875 (part 13), 12912–12924, 12987–12992, 13045–13052, 14768–

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

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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, 13050–13061 (part 13), 13146–13148; Sutherland against, 11601–11604 (part 12), 12805–12817 (part 13), 12855–12862, 12980–12986, 13055–13056, 13109–13111; Thomas against, 11181–11185 (part 11), 11598–11600 (part 12), 12862–12869 (part 13), 12978–12980; Townsend against, 11870–11872 (part 12); and Walsh for, 13052–13054 (part 13).

See also Letters from the Interstate Commerce Commission to the Chairman of the Committee on Interstate Commerce, submitting certain Suggestions to the Bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); Letter from the Commissioner of Corporations to the Chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the Bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); Brief by the Bureau of Corporations, relative to Section 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. *Grats*, 253 U. S. 421, 429–442 (p. 564 at pp. 570–579 of this volume).

the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

Principal office in Washington, but Commission may meet elsewhere.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

May prosecute any inquiry anywhere in United States.

Sec. 4. DEFINITIONS.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce."

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation."

"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.

"Documentary evidence."

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Acts to regulate commerce."

"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.

"Antitrust acts."

"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; 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

Sec. 4. DEFINITIONS—Continued.

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.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.

Unfair methods unlawful.

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

Commission to prevent. Banks and common carriers excepted.

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 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

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.

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.

Modification or setting aside by the Commission of its order.

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

Disobedience of order. Application to Circuit Court of Appeals by Commission.

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.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission 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

To be served on Commission.

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

Jurisdiction of Court of Appeals same as on application by Commission, and Commission's findings similarly conclusive.

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.

Jurisdiction of Court exclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Proceedings to have precedence over other cases.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same

Liability under antitrust acts not affected.

shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

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

Personal;

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 cor-

At office or place of business; and

poration to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person,

By registered mail.

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

Verified return by person serving, and return post-office receipt, proof of service.

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.

"UNFAIR METHODS OF COMPETITION."

1. "The petitioner urges that the declaration of section 5 must be held void for indefiniteness unless the words 'unfair methods of competition' be construed to embrace no more than acts which, on September 26, 1914, when Congress spoke, were identifiable as acts of unfair trade then condemned by the common law as expressed in prior cases. But the phrase is no more indefinite than 'due process of law.' * * * If the expression 'unfair methods of competition' is too uncertain for use, then under the same condemnation would fall the innumerable statutes which predicate rights and prohibitions upon 'unsound mind,' 'undue influence,' 'unfaithfulness,' 'unfair use,' 'unfit for cultivation,' 'unreasonable rate,' 'unjust discrimination,' and the like. This statute is remedial, and orders to desist are civil; but even in criminal law convictions are upheld on statutory prohibitions of 'rebates or concessions' or of 'schemes to defraud,' without any schedule of acts or specific definition of forbidden conduct, thus leaving the courts free to condemn new and ingenious ways that were unknown when the statutes were enacted. Why? Because the general ideas of 'dishonesty' and 'fraud' are so well, widely, and uniformly understood that the general term 'rebates or concessions' and 'schemes to defraud' are sufficiently accurate measures of conduct." Baker, J., in *Sears, Roebuck & Co.* v. *Federal Trade Commission*, April 29, 1919, 258 Fed. 307, 310, 311. (See case in this vol., p. 536, at p. 541.)

2. "It seems to us that unfair methods of competition between individuals are not contemplated by the Act. Congress could not have intended to submit to the determination of the Commission such questions as whether a person, partnership, or corporation had treated or bribed the employees of a competitor for the purpose of inducing them to betray their employer. We think the unfair methods, though not restricted to such as violate the Antitrust Acts, must be at least such as are unfair to the public generally. It seems to us that section 5 is intended to provide a method of preventing practices unfair to the general public, and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the Antitrust Acts. Such a preliminary inquiry and determination constitutes a most important supplement in carrying on the public policy which those acts are intended to vindicate. * * *

3. "No authority is given to any individual to present his grievances and the commission is to interpose only in the interest of the public. * * *

4. "Counsel for the commission calls our attention to the opinion of the Circuit Court of Appeals for the Seventh Circuit, not yet reported, Sears, Roebuck & Co., petitioners, against Federal Trade Commission, respondent. The practice there prohibited as unfair was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to discredit all competitors. It was clearly a method unfair to the public generally." Ward, J., in *Federal Trade Commission* v. *Gratz*, May

ANNOTATIONS, Sec. 5—Continued.

"UNFAIR METHODS OF COMPETITION"—Con.

14, 1919, 258 Fed. 314, 316, 317. (See case in this vol., p. 545, at pp. 548, 549.

5. "In my opinion, Congress had in mind, in this legislation, the prevention of acts which amount to unfair competition at their very inception. In this manner the anti-trust law was supplemented. To make successful either a criminal prosecution or other liability under the Clayton Act, it is necessary to find that a trust or monopoly is created which restrains trade. One act which may be an act of unfair competition may, of itself, restrain trade and may do damage to a complainant. The Federal Trade Commission Act was intended to reach such an unfair business method where the antitrust law could not do so. Of course, if all unfair acts were dealt with by the Federal Trade Commission, there would be no monopoly or trust created. It was intended by section 5 of the act to prevent practices or methods of business unfair to the public which, if not prevented, would grow and create monopolies, and thus restrain trade and lessen competition." Manton, J., concurring in *Beechnut Packing Co.* v. *Federal Trade Commission*, February 26, 1920, 264 Fed. 885, 890. (See case in this vol., p. 556, at p. 562.)

6. "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 a 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." McReynolds, J., in *Federal Trade Commission* v. *Gratz*, June 7, 1920, 253 U. S., 421, 427, 40 Sup. Ct. 572, 575. (See case in this vol., p. 564, at p. 569.)

7. "Instead of undertaking to define what practices should be deemed unfair, as had been done in earlier legislation, the Act left the determination to the commission. Experience with existing laws had taught that definition, being necessarily rigid, would prove embarrassing and, if rigorously applied, might involve great hardship. Methods of competition which would be unfair in one industry, under certain circumstances, might, when adopted in another industry, or even in the same industry under different circumstances, be entirely unobjectionable. Furthermore, an enumeration, however comprehensive, of existing methods of unfair competition must necessarily soon prove incomplete, as with new conditions constantly arising novel unfair methods would be devised and developed. * * * Recognizing that the question whether a method of competitive practice was unfair would ordinarily depend upon special facts, Congress imposed upon the commission the duty of finding the facts; and it declared that findings of fact so made (if duly supported by evidence) were to be taken as final. The question of whether the method of competition pursued could, on those facts, reasonably be held by the commission to constitute

an unfair method of competition, being a question of law, was necessarily left open to review by the court." Brandeis, J., dissenting in *Federal Trade Commission* v. *Gratz*, June 7, 1920, 253 U. S., 421, 436, 437, 40 Sup. Ct. 572, 578. (See case in this vol., p. 564, at pp. 575, 576.)

8. "The reason assigned by the Circuit Court of Appeals for so holding [that the order of the commission must be set aside, because the commission was 'without authority to determine the merits of specific individual grievances'] was that the evidence failed to show that the practice complained of (although acted on in individual cases by respondents) had become their 'general practice.' But the power of the Federal Trade Commission to prohibit an unfair method of competition found to have been used is not limited to cases where the practice had become general. What section 5 declares unlawful is not unfair competition. That had been unawful before. What that section made unlawful were 'unfair methods of competition'; that is, the method or means by which an unfair end might be accomplished. The commission was directed to act, if it had reason to believe that an 'unfair method of competition in commerce has been, or is being used.' The purpose of Congress was to prevent any unfair method which may have been used by any concern in competition from becoming its general practice. It was only by stopping its use before it became a general practice, that the apprehended effect of an unfair method in suppressing competition by destroying rivals could be averted." Brandeis, J., dissenting in *Federal Trade Commission* v. *Gratz*, June 7, 1920, 253 U. S. 421, 441, 40 Sup. Ct. 572, 579. (See case in this vol., p. 564, at pp. 578, 579.)

PRACTICES IN PARTICULAR CASES—REPRESENTATIONS CALCULATED TO DECEIVE.

9. "In the second paragraph of the order petitioner is commanded to cease selling sugar below cost. 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. But manifestly in making such a sale or gift the owner may put forward representations and commit acts which have a capacity or a tendency to injure or to discredit competitors and to deceive purchasers as to the real character of the transaction. That paragraph should therefore be modified by adding to it 'by means of or in connection with the representations prohibited in the first paragraph of this order, or similar representations' ". Baker, J., modifying as above, but otherwise affirming Commission's order in 1 F. T. C. 163. *Sears Roebuck & Co.* v. *Federal Trade Commission*, April 29, 1919, 258 Fed. 307, 312. (See case in this vol., p. 536, at p. 542.)

PRACTICES IN PARTICULAR CASES—FULL LINE FORCING.

10. "That the commission did not find sufficient proof to sustain the second count in the complaint, viz, that the method of the respondent found to be unfair violated section 3 of the Act of October 15, 1914, known as the Clayton Act, which makes unfair any condition, agreement, or understanding that may lessen competition or tend to create a monopoly shows that the method found to be unfair must have been unfair in certain individual transactions. And we discover no evidence to support the finding in paragraph 2, that the respondents 'adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them

ANNOTATIONS, Sec. 5—Continued.

PRACTICES IN PARTICULAR CASES—FULL LINE FORCING—Continued.

from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging.' It is the natural and prevailing custom in the trade to sell ties and bagging together, just as one witness testified it is to sell cups and saucers together. Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917 when there was fear that owing to scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties." Ward, J., reversing Commission's order in 1 F. T. C. 249. *Federal Trade Commission* v. *Gratz*, 258 Fed. 314, 317. (See case in this vol., p. 545, at pp. 548, 549.)

11. "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.

12. "Nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. All question of monopoly or combination being out of the way, a private merchant, acting with entire good faith, may properly refuse to sell except in conjunction, such closely associated articles as ties and bagging. 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. *United States* v. *Colgate*, 250 U. S. 300; *United States* v. *A. Schrader's Son, Inc.* (Mar. 1, 1920), 252 U. S. 85.

13. "The first count of the complaint fails to show any unfair method of competition practiced by respondents and the order based thereon was improvident." McReynolds, J., affirming decision of lower court, in *Federal Trade Commission* v. *Gratz*, June 7, 1920, 253 U. S., 421, 428, 40 Sup. Ct. 572, 575. (See case in this vol., p. 564, at p. 570.)

Brandeis, J. dissenting, at pp. 438–441. (See case in this vol., p. 564, at pp. 576–578.)

14. "It is obvious that the imposition of such a condition [that the purchaser of ties must also purchase bagging] is not necessarily and universally an unfair method, but that it may be such under some circumstances is equally clear. Under the usual conditions of competitive trade the practice might be wholly unobjectionable. But the history of combinations has shown that what one may do with impunity may have intolerable results when done by several in cooperation. Similarly what approximately equal individual traders may do in honorable rivalry may result in grave injustice and public injury if done by a great corporation in a particular field of business which it is able to dominate. In other words, a method of competition fair among equals may

be very unfair if applied where there is inequality of resources. * * *

15. "The following facts found by the commission and which the Circuit Court of Appeals held were supported by sufficient evidence, show that the conditions in the cotton, tie and bagging trade were in 1918 such that the Federal Trade Commission could reasonably find that the tying clause here in question was an unfair method of competition. * * * By virtue of their selling agency for the Carnegie Co., Warren, Jones & Gratz held a dominating and controlling position in the sale and distribution of cotton ties in the entire cotton-growing section of the country and thereby it was in a position to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Co. A great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firm than Warren, Jones & Gratz. In many instances Warren, Jones & Gratz refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging, and such purchasers were oftentimes compelled to buy from them bagging manufactured by the American Manufacturing Co. in order to procure a sufficient supply of steel ties.

16. "These are conditions closely resembling those under which 'full line forcing,' 'exclusive dealing requirements,' or 'shutting off materials, supplies, or machines from competitors'—well-known methods of competition—have been held to be unfair when practiced by concerns holding a preponderant position in the trade."

PRACTICES IN PARTICULAR CASES—FREE GOODS AS AN INDUCEMENT TO PURCHASE.

17. Commission's order in *Ward Baking Co.* case, 1 F. T. C. 388, reversed in *Ward Baking Co.* v. *Federal Trade Commission*, February 26, 1920, 264 Fed. 330, on ground that interstate commerce not involved. See digest of case, *infra*, pars. 25, 26. (See case at pp. 550–552 of this vol.)

PRACTICES IN PARTICULAR CASES—GRATUITIES TO CUSTOMERS TO INDUCE PURCHASES.

18. Where the commission found that respondent had been "lavishly giving gratuities such as luncheons, cigars, meals, theater tickets, and entertainment to employees of customers as an inducement to influence their employers to purchase or to contract to purchase from the said respondent" its various products, without other consideration therefor, and held such methods of competition unfair and in violation of section 5, and the Court, examining the evidence to see whether the Commission's findings were supported by the testimony or not, found "that the officers of the company in the year 1918 did entertain at the company's expense both customers and employees of customers; and that the salesmen down to May 1 were employed on a salary or on a salary and commission basis and were allowed to charge in their monthly accounts reasonable lump sums for entertainment. After May 1 they were on a commission basis only, and any entertainment given by them was given at their own expense," a charge in the complaint of giving valuable presents and sums of money having been abandoned by the Commission, *held*, in *New Jersey Asbestos Co.* v. *Federal Trade Commission*, February 6, 1920, 264 Fed. 509, reversing the order of the Commission in 1 F.T.C.

ANNOTATIONS, Sec. 5—Continued.

PRACTICES IN PARTICULAR CASES—GRATUITIES TO CUSTOMERS TO INDUCE PURCHASES—Con.

472 on the basis of the decision of the lower court in the Gratz case (see pp. 545–549 of this vol.), that the matter was one not so affecting the public as to be within the jurisdiction of the Commission. (See case at pp. 553–556 of this vol.)

PRACTICES IN PARTICULAR CASES—RESALE PRICE MAINTENANCE.

19. Where it appeared, among other things, that respondent adopted a resale price maintenance policy by advising those with whom it dealt, that it would not sell to any one failing to observe the resale prices suggested by it, or to any dealer in its chain of distribution selling to a distributor failing to observe suggested resale prices, but where it did not appear that there were any express contracts between the respondent and any of its distributors, *held*, in *Beechnut Packing Co.* v. *Federal Trade Commission*, Feb. 26, 1920, 264 Fed. 885 (pp. 556–564 of this volume) reversing the Commission's order in the *Beechnut Packing Co.* case, 1. F. T. C. 516, that the Commission's conclusions that the methods of competition in the case in question were unfair, could not be sustained in the face of the decision in *United States* v. *Colgate Co.*, 250 U. S. 300.[1]

ADMINISTRATION.

20. "On the face of this statute the legislative intent is apparent. Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The commissioners, representing the Government as *parens patriae*, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases. But the restraining order of the commissioners is merely provisional. The trader is entitled to his day in court, and then the same principles and tests that have been applied under the common law or under statutes of the kind hereinbefore recited, are expected by Congress to control." Baker, J., in *Sears Roebuck & Co.* v. *Federal Trade Commission*, April 29, 1919, 258 Fed. 307, 311. (See case in this vol., p. 536, at p. 541.)

21. " * * * the act undertook to preserve competition through supervisory action of the commission. The potency of accomplished facts had already been demonstrated. The task of the commission was to protect competitive business from further inroads by monopoly. It was to be ever vigilant. If it discovered that any business concern had used any practice which would be likely to result in public injury—because in its nature it would tend to aid or develop into a restraint of trade—the commission was directed to intervene before any act should be done or condition arise violative of the anti-trust act. And it should do this by filing a complaint with a view to a thorough investigation; and, if need be, the issue of an order. Its action

[1] But *see United States* v. *Schrader's Son, Inc.*, Mar. 1, 1920, 252 U. S. 85, distinguishing Colgate case from Dr. Miles's Medical Co. case.

was to be prophylactic. Its purpose in respect to restraint of trade was preventive of diseased conditions, not cure." Brandeis, J., dissenting in *Federal Trade Commission* v. *Gratz*, June 7, 1920, 253 U. S. 421, 435, 40 Sup. Ct. 572, 577 (see case in this vol., p. 564, at p. 574).

CONSTITUTIONALITY.

22. "But such a construction of section 5 [one not construing the words "unfair methods of competition" to embrace no more than acts which, on September 26, 1914, when Congress spoke, were identifiable as acts of unfair trade then condemned by the common law as expressed in prior cases] according to petitioner's urge, brings about an unconstitutional delegation of legislative and judicial power to the commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. [Citing cases.]

23. "With the increasing complexity of human activities many situations arise where governmental control can be secured only by the 'board' or 'commission' form of legislation. In such instances Congress declares the public policy, fixes the general principles that are to control, and charges the administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress. Though the action of the commission in finding the facts and declaring them to be specific offenses of the character embraced within the general definition by Congress may be deemed to be quasi legislative, it is only so in the sense that it converts the actual legislation from a static into a dynamic condition. But the converter is not the electricity. And though the action of the commission in ordering desistance may be counted quasi judicial on account of its form, with respect to power it is not judicial, because a judicial determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court." Baker, J., in *Sears Roebuck & Co.* v. *Federal Trade Commission*, April 26, 1919, 258 Fed. 307, 311. (See case in this vol., p. 536, at p. 542.).

"TO THE INTEREST OF THE PUBLIC"—ISSUANCE OF ORDERS AFTER PRACTICE ABANDONED.

24. "Petitioner insists that the injunctional order was improvidently issued because, before the complaint was filed and the hearing had, petitioner had discontinued the methods in question and, as stated in its answer, had no intention of resuming them. For example, no sugar offers of the character assailed were made after August, 1917. But respondent was required to find from all the evidence before it what was the real nature of petitioner's attitude. It was permissible for respondent to take judicial notice of the Government's war-time control of sugar sales and consumption. It was also proper to note that petitioner was contending (and still contends) that the Act is void for indefiniteness, that the Act is unconstitutional, and that the Act, even if valid, under any proper construction, has not been infringed by petitioner's practices. * * * no assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course." Baker, J., in *Sears Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307-310. (See case in this vol., p. 536, at p. 540.)

ANNOTATIONS, Sec. 5—Continued.

INTERSTATE COMMERCE.[1]

25. Where "it appeared from the testimony that the respondent transported the bread in question in its own wagons from Fall River, Mass., to Tiverton and Stone Bridge, R. I., their wagons calling at the retail stores in those places and their drivers then and there selling the respondent's bread to such storekeepers as wanted to buy, and then and there delivering additional bread gratis to the purchasers," *held*, on basis of decision in *Wagner* v. *City of Covington*, December 8, 1919, 251 U. S. 95, that interstate commerce was not involved, and that the Commission therefore had no jurisdiction to hold unfair the giving of bread gratis under the circumstances concerned. *Ward Baking Co.* v. *Federal Trade Commission*, February 26, 1920, 264 Fed. 330 (See case at pp. 550–552 of this vol.), reversing Commission's order in 1 F. T. C. 388.

The Court stated at page 331 (p. 551 of this vol.):

26. "Doubtless bread sold in Massachusetts to be delivered to the purchaser in Rhode Island would be interstate commerce, but that is not this case. Moreover, the commission is not finding the act of transportation from Massachusetts to Rhode Island unfair, but the method of local sales made in Rhode Island. If the respondent had its own stores in Rhode Island and carried to them from Massachusetts bread to be there sold, this method of selling could not be considered interstate commerce."

PLEADING.

27. "If, when liberally construed, the complaint is plainly insufficient to show unfair competition within the proper meaning of these words, there is no foundation for an order to desist—the thing which may be prohibited is the method of competition specified in the complaint. Such an order should follow the complaint; otherwise it is improvident and, when challenged, will be annulled by the court."

28. "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.

29. "Nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. * * *

30. "The first count of the complaint fails to show any unfair method of competition practiced by respondents and the order based thereon was improvident." McReynolds, J., in *Federal Trade Commission* v. *Gratz*, June 7, 1920, 253 U. S. 421, 427–429, 40 Sup. Ct. 572, 574, 575. (See case in this vol., p. 564, at pp. 569, 570.)

INTERLOCUTORY ORDER NOT REVIEWABLE.

31. In complaint No. 29, *Federal Trade Commission* v. *The Nulomoline Co.*[2] (see 1 F. T. C. 400), the

[1] On interstate commerce, see also *post*, pars. 33–44 (pp. 484–486), and annotations to Clayton Act, pars. 32–35 (p. 500).

[2] A more complete report of this case will appear in the next volume of the Commission's decisions.

United States Circuit Court of Appeals of the Second Circuit, sitting in New York City, refused on August 16, 1918, to interfere with the Commission in the taking of testimony.

32. The respondent contended that the Commission was undertaking to pass upon the validity of a patent which under the law the Commission had no right to do. The Court, however, decided the order of the Commission requiring the taking of testimony was interlocutory and for this reason refused to interfere.

Sec. 6. FURTHER POWERS.

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.

To gather and compile information, and to investigate with reference to organization, business, etc., of corporations, except banks and common carriers.

(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, 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.

Sec. 6. FURTHER POWERS—Continued.

To investigate, on direction President or either House, alleged violations of antitrust acts.

(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 by any corporation.

To investigate and make recommendations, on application of Attorney General, for readjustment of business of alleged violator 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 in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

To make public, as it deems expedient, portions of information obtained.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith 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 make reports to Congress, together with recommendations for new legislation.

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.

"MANUFACTURE" OR "PRODUCTION," DISTINGUISHED FROM "COMMERCE"—AS AFFECTING RIGHT TO INVESTIGATE CONCERN UNDER CLAUSE A.[1]

33. Where it appeared that the Commission, at the request of the Navy Department, undertook to make an investigation to ascertain costs of production of a patented product, in the manufacture of which certain secret processes were also involved; that the purpose of said investigation was to furnish the Navy Department with information to enable it to come to a conclusion as to the price it should pay for said product; that no complaint of unfair competition had been made against the manufacturer concerned; that no such element, furthermore, was in any way involved in the case and that nowhere had it been made to appear that the defendant was "engaged in interstate commerce in any other way than any other corporation or any citizen may be so engaged, by making one or more shipments of manufactured goods from one State into another."

[1] On interstate commerce, see also *ante*, pars. 25, 26 (p. 482) and annotations to Clayton Act, pars. 32–35 (p. 500).

Held in *United States* v. *Basic Products Co.*, Sept. 9, 1919, 260 Fed. 472; that such investigation, under the circumstances involved, was beyond the powers of the Commission.

The court stated, *inter alia* (p. 481):

34. "* * * investigation under subdivision (a), section 6, is limited to corporations engaged in interstate commerce. The defendant is engaged in manufacture.

35. "A comprehensive consideration of the lack of constitutional authority over industry is found in the language of Mr. Justice Lamar, who delivered the opinion of the court in *Kidd* v. *Pearson*, 128 U. S. 1, 20, 21, 9 Sup. Ct. 6, 10 (32 L. Ed. 346), as follows:

36. " 'No distinction is more popular to the common mind or more clearly expressed in economic or political literature than that between manufacture and commerce. Manufacture is a transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. * * * If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market * * *.' "

"MANUFACTURE" OR "PRODUCTION" AS DISTINGUISHED FROM "COMMERCE"—AS AFFECTING RIGHT TO DEMAND REPORTS UNDER CLAUSE B.

37. "The plaintiff is a corporation engaged in the mining, production, and sale of bituminous coal. It owns and operates mines in Kentucky and Ohio. Practically all of the coal mined in Kentucky and about one-half of the coal mined in Ohio is shipped to points without those States, and the remainder of that mined in Ohio to points in that State. On January 31, 1920, the defendant commission served upon a large number of coal-mining corporations, including the plaintiff, an order requiring them to report 'monthly costs of production and other data, as set out in specification accompanying the order,' * * *." No question of unfair competition was involved, but defendant "asserts that such information is sought for a lawful purpose within the scope of the powers conferred upon the defendant by section 6 of the said commission act." *Held*, that under the circumstances the commission had no right to demand such a report. *Maynard Coal Co.* v. *Federal Trade Commission*,[2] April 19,

[1] The case came up on a petition for a writ of mandamus against the company filed by the Attorney General at the request of the Commission. Demurrer to the answer of defendant was overruled and the petition refused. In connection with this case see third paragraph of footnote to Federal Trade Commission Act on pp. 467, 468.

[2] Granting temporary injunction against the Commission. In connection with this case see third paragraph of footnote to Federal Trade Commission Act on pp. 467, 468.

ANNOTATIONS, Sec. 6—Continued.

"MANUFACTURE" OR "PRODUCTION" AS DISTINGUISHED FROM "COMMERCE"—AS AFFECTING RIGHT TO DEMAND REPORTS UNDER CLAUSE B—Continued.

1920, Supreme Court of the District of Columbia.

The court stated *inter alia:*

38. "* * * the commission in its answer 'denies that the plaintiff has the right to segregate its business and to say that part of its business is interstate and part is intrastate, but in order to ascertain if defendant is engaged in commerce the courts will look to the entire business transactions of the plaintiff, and if any part of its business is intrastate and a part interstate and the whole business is conducted under one organization as is set forth and admitted in the plaintiff's bill, then the defendant insists that the plaintiff, considering its business as a whole (is engaged in) interstate commerce and the defendant has the right to ask the information sought.'

39. "And the information sought in this case is such as would apply as well to a corporation whose business was wholly intrastate as to the plaintiff. The defendant unquestionably is demanding information as to intrastate commerce and as to coal production, and frankly asserts the right to do so.

40. "That there is a radical distinction between production and commerce is clear. [Also quoting that part of *Kidd* v. *Pearson*, 128 U. S. 1, 20, quoted in *United States* v. *Basic Products Co.*, *supra* (par. 36, p. 485).]"

41. "In the case of a corporation doing a wholly intrastate business could it be said that Congress had any visitorial power under the commerce clause of the Constitution of the United States? Clearly it has not. The fact that it happens to be the same corporation in this instance which mines and ships the coal does not give Congress any greater powers to regulate production to the intrastate commerce of such corporation. The visitorial power of Congress is limited to that part of the business over which it has control, and which under the Constitution it has the power to regulate."

42. "The power claimed by the commission is vast and unprecedented. The mere fact that a corporation engaged in mining ships a portion of its product to other States does not subject its business of production or its intrastate commerce to the powers of Congress * * *."

43. "The corporations referred to in the act are, by its terms, limited to those engaged in 'commerce' as defined in the act, and all the powers vested in the commission should be, and it seems may be, construed with this limitation. But the commission has undertaken to construe the act otherwise, and to take steps under its construction of the act to require information and reports not relating to interstate commerce, but relating chiefly or wholly to production, and under its order the information which it has the power to demand can not be separated from that over which it has no control * * *.

44. "It follows, therefore, that the commission can not compel the making of the reports which it has demanded of the plaintiff."

Sec. 7. SUITS IN EQUITY UNDER ANTITRUST ACTS. COMMISSION AS MASTER IN CHANCERY.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, 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.

Court may refer suit to Commission.

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.

"THAT IN ANY SUIT * * * THE COURT MAY, * * * REFER SAID SUIT TO THE COMMISSION AS A MASTER IN CHANCERY," ETC.

45. Above possibility called to the attention of the court, but such course not considered necessary under the circumstances of the case in *United States* v. *Eastman Kodak Co.*, Aug. 24, 1915, 226 Fed. 62, 81.

Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS.

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 shall detail from time to time such officials and employees to the commission as he may direct.

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.

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 supœna the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the

Commission to have access to documentary evidence and right to copy same.

May require attendance of witnesses and production of evidence.

Sec. 9. EVIDENCE. WITNESSES TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT—Continued.

Subpœnas, oaths, affirmations, examination of witnesses. Reception of evidence.

commission may sign subpœnas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Witnesses and evidence may be required from any place in United States.

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.

Disobedience to a subpœna. Commission may invoke aid of any United States court.

In case of contumacy or disobedience of subpœna, any district court in jurisdiction involved may order obedience.

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.

Disobedience thereafter punishable as contempt.

Mandamus from District Courts on application of Attorney General to enforce compliance with Act.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

Commission may order depositions at any stage.

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 investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent.

May be taken before person designated by Commission.

Testimony to be reduced to writing, etc.

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 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.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

Sec. 10. PENALTIES.

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the 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.

False entries, statements, or tampering with accounts, records, or other documentary evidence, or willful failure to make entries, etc., or

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

Willful refusal to submit documentary evidence to Commission.

Sec. 10. PENALTIES—Continued.

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.

Offender subject to fine or imprisonment or both.

Failure of corporation to file required report.

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.

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.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

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, 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 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 October 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.

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 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

"Antitrust laws."

[1] Annotations cover cases through 265 Fed. 464 (part 2, Advance Sheets, issued as of Aug. 26, 1920), and 40 Sup. Ct. Reporter, which disposes of all cases decided at the October term, 1919 (last decisions handed down on June 7, 1920). In the case of sections other than secs. 1, 2, 3, 7, 8 (sections administered by the Commission in so far as applicable. See first paragraph of sec. 11 on p. 518), and 11, annotation has been limited to a list of the decisions for the reason that some of such sections do not involve the Commission at all, and the rest do so only more or less remotely.

It should also be noted in connection with this law that the so-called Shipping Board Act (Sec. 15, C. 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 * * *."

[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 and 1921 (Sundry Civil Appropriation Act, July 19, 1919, ch. 24, par. 1, 41 Stat., and Sundry Civil Appropriation Act, June 5, 1920, ch. —, par. 1, 41 Stat., 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 combina-

Sec. 1. DEFINITIONS—Continued.

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; 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

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tion or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

PERSON MONOPOLIZING TRADE GUILTY OF MISDEMEANOR—PENALTY.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

COMBINATIONS IN TERRITORIES OR DISTRICT OF COLUMBIA ILLEGAL—PENALTY.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

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

nothing in this Act contained shall apply to the Philippine Islands.

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.

"Person or persons."

"COMMERCE."

On interstate commerce, see annotations to Federal Trade Commission Act, pars. 25, 26 (p. 482), 33-44 (pp. 484-486), and annotations to this act, pars. 32-35 (p. 500).

Sec. 2. PRICE DISCRIMINATION.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Colum-

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.

Sec. 2. PRICE DISCRIMINATION—Continued.

bia 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.

But permissible if based on difference in grade, quality, or quantity, or in selling or transportation cost, or if made to meet competition, and

Vendor may select own customers if not in restraint of trade.

LEASES.

1. "In the opinion of the court, section 2 of the act is limited to sales and not leases, and therefore does not apply to any of the acts prohibited by section 3." *United States* v. *United Shoe Machinery Co.*, March 31, 1920, 264 Fed. 138, 165.

REFUSAL TO SELL ON ACCOUNT OF FAILURE TO MAINTAIN SUGGESTED RESALE PRICES.

See also *post*, pars. 85–88.

2. *Held*, not within provisions of above section as to price discrimination. *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, July 20, 1915, 224 Fed. 566.

"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."

See also *post*, pars. 6, 9, 85–88.

3. "The vital question is whether defendant's method of business, coupled with the acquiescence of its customers therein by observing its requests or demands to maintain prices, was such cooperation between seller and purchasers as amounted to a combination in restraint of trade within the rule laid down in *Dr. Miles Medical Co.* v. *Park & Sons Co.*, 220 U. S. 373, 31 Sup. Ct. 376, 55 L. Ed. 502, and other following cases. We are obliged to hold that the question has been clearly answered in the negative by the Supreme Court in *United States of America*, v. *Colgate & Co.*, 250 U. S. 300, 39 Sup. Ct. 465, 63 L. Ed. 992, decided June 2, 1919. The court expressly held that the announcement in advance that customers were expected to charge a price fixed by the seller and that the penalty for refusal to maintain prices would be refusal to sell to the offending customer, observance of the request to maintain prices by customers generally, and the actual enforcement of the penalty by refusal to sell to such customers as failed to maintain the price, did not constitute a violation of the trust statute. Nothing more was done by the defendant and its customers in this case.

4. "Since the defendant, under the *Colgate Case*, merely exercised the right reserved by the Clayton Act (Act Cong. Oct. 15, 1914, C. 323, par. 2, 38 Stat. 730 [Comp. St. par. 8835 b] to dealers of 'selecting their own customers in bona fide transactions and not in restraint of trade,' the plaintiff can not recover under its charge of unlawful discrimination in price." *Cudahy Packing Co.* v. *Frey & Son*, Circuit Court of Appeals, July 16, 1919, 261 Fed. 65, 67, reversing lower court.

"WHERE THE EFFECT OF SUCH DISCRIMINATION MAY BE TO SUBSTANTIALLY LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY IN ANY LINE OF COMMERCE."

5. "The second cause of action, brought under the Clayton Act, is based solely upon the allegation that the defendants discriminated in the price of Goodyear supplies between dealers (including this plaintiff) and manufacturers of automobiles, and in favor of such manufacturers' * * *.

6. "There is nothing in the complaint to show how the alleged discrimination might substantially lessen competition, and it certainly could not tend to create a monopoly * * * the manufacturers sell to dealers, and the latter to the consumer. There is apparently no competition between the manufacturers of tires and the dealers, nor is it alleged that any exists. The differentiation in price would not therefore substantially lessen competition. If such would be the effect, it must be set forth in some discernible way, and not in the mere language of the statute. There is no unreasonable arrangement set forth, nor is it made apparent how competition may be substantially lessened, or how the defendants were doing more than to select 'their own customers in bona fide transactions and not in restraint of trade.' More than mere sweeping conclusions in the language of the statute should be alleged to subject parties to trial. I can see no basis for the second cause of action." Hand, District Judge, sustaining demurrer in *Baran* v. *Goodyear Tire & Rubber Co.*, Jan. 17, 1919, 256 Fed. 571, 574.

WORDS AND PHRASES—"RESTRAINT OF TRADE."

7. "It must be admitted that there is abundant authority for the general proposition that preventing competition is restraint of trade; but it does not follow that it is unlawful either to prevent any and every species of competition or to restrain trade in any and every degree. The only competition prevented or sought to be prevented by defendant's acts is that of Cream of Wheat against itself; the only trade restrained is the commercial warfare of a large buyer against small ones, or that of a merchant who for advertising purposes may sell an article at a loss, in order to get customers at his shop, and then to persuade them to buy other things at a compensating profit. That competition, as encouraged by statutes and decisions, does not include practices, has been sufficiently shown (with ample citations) in *Fisher Flouring Mills Co.* v. *Swanson*, 76 Wash. 649, 137 Pac. 144, 51 L. R. A. (N. S.) 522.

8. "It is further obvious that, when plaintiff premises that preventing competition is restraining trade, it is assumed that the resultant restraint is *unreasonable;* for there is nothing in the Clayton Act to compel or induce courts to hold that the trade restraint referred to by this statute differs in kind, quality, or degree from that now held to be meant by the Sherman Act."

ANNOTATIONS, Sec. 2—Continued.

WORDS AND PHRASES—"RESTRAINT OF TRADE"—Continued.

9. "Section 2 plainly identifies the lessening of competition with restraint of trade. (Cf. the body of the section with the last exception.) But price discrimination is only forbidden when it 'substantially' lessens competition. Construing the whole section together, the last exception reads in effect that a 'vendor may select his own bona fide customers providing the effect of such selection is not to *substantially* and *unreasonably* restrain trade.' How it can be called substantial and unreasonable restraint of trade to refuse to deal with a man who avowedly is to use his dealing to injure the vendor, when said vendor makes and sells only such an advertisement begotten article as Cream of Wheat, whose fancy name needs the nursing of carefully handled sales to maintain an output of trifling moment in the food market, is beyond my comprehension." *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, July 20, 1915, 224 Fed. 566, 573, 574.

Section referred to in passing. *United States* v. *American Can Co.*, Feb. 23,1916, 230 Fed. 859, 885.

Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS.

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.

APPLICABILITY TO AGENCY.

See also *post*, pars. 15–17.

10. "* * * there can be no question in view of the payment in advance and the other elements of the transaction, that title to the magazines which these wholesale agents receive passes to them. They are no mere factors or agents. Nevertheless they are clearly much more than purchasers * * *.

11. "If nothing but a sale were involved, I might support com-

plainant's contention that defendant has violated the Clayton Act by preventing its wholesale dealers from selling the Pictorial Review through dealers and boys; * * *."

12. "* * * looking behind the form of the contract which the defendant makes with its agents to the inherent features of the transaction, I think it may be said that the selling arrangement more nearly resembles an agency conducted by district agents in cooperation with the Curtis boys than it does an outright sale to the district agents and nothing more * * *." Hand, J., denying motion for temporary injunction in *Pictorial Review Co.* v. *Curtis Publishing Co.*, June 23, 1917, 255 Fed. 206, 208, 210, on the ground that it had not been established with sufficient clearness that defendant's contract caused an unreasonable restraint of trade or otherwise came within the prohibitions of the Clayton Act.

13. "If an agency only were created by the contract in question it is clear that the provisions of this act would not apply, because by its terms it is made applicable only to leases, sales or contracts for sale." *Standard Fashion Co.* v. *Magrane-Houston Co.*, March 9, 1918, 254 Fed. 493, 495.

ASSIGNMENT OF EXCLUSIVE TERRITORY.

14. Where the owner of a product sold under a trade-mark name, which, through wide advertising, had become well known to the purchasing public, adopted a system of licensing dealers for certain territories, to whom it sold exclusively, in order that it might thereby be enabled through its inspection department to maintain the quality of its product, *Held*, that a refusal to sell to an unlicensed dealer in an assigned territory did not violate the section in question, "in view of the possibility of adulteration and the hardship to the manufacturer of maintaining such supervision over the bottling as it deemed necessary, if required to sell every intending purchaser." (Quotation from syllabus.) *Coca-Cola Co.* v. *J. G. Butler & Sons*, Feb. 7, 1916, 229 Fed. 224.

CONSTRUCTION OF LEASES, SALES OR CONTRACTS.

See also *ante*, pars. 10–13.

15. "If I thought that the system of marketing defendant's magazines was a cover to avoid the provisions of the Clayton Act, or obtain a monopoly, I might reach a very different conclusion, but I am satisfied that the system is genuine, and not in any respect other than what it represents itself to be * * *." Hand, J., in *Pictorial Review Co.* v. *Curtis Publishing Co.*, June 23, 1917, 255 Fed. 206, 209.

16. "If an agency only were created by the contract in question it is clear that the provisions of this act would not apply, because by its terms it is made applicable to leases, sales or contracts for sale. Although the plaintiff, by the terms of the contract, grants to the defendant an agency for the sale of Standard patterns, the Court will search beneath the language employed to discover the real nature of the contract and will place its own construction upon it wit out reference to its characterization by the parties themselves." *Standard Fashion Co.* v. *Magrane-Houston Co.*, March 9, 1918, 254 Fed. 493, 495.

17. *Held*, that a contract in substance one of sale, though called one of agency, containing a provision that the covenantee under-

ANNOTATIONS, Sec. 3—Continued.

CONSTRUCTION OF LEASES, SALES OR CONTRACTS—Continued.

takes not to sell any of the products involved other than those of the vendor, during the term of the contract, under the circumstances concerned, violates the above section. *Standard Fashion Co.* v. *Magrane Houston Co.*, June 28, 1919, Circuit Court of Appeals, 259 Fed. 793.

CONSTITUTIONALITY—PATENTS PREVIOUSLY GRANTED.

18. "* * * the court can conceive of no reason why Congress can not restrict the rights of patentees, if in its opinion they are used in a manner resulting in oppressing the public. A patent is merely a privilege granted to inventors by Congress, and whenever that privilege is abused or is found to be exercised in a manner contrary to the public policy of the Government, Congress certainly has the power to enact laws which will prevent such an abuse. * * *" *United States* v. *United Shoe Machinery Co.*, June 6, 1916, 234 Fed. 127–151.

19. "The contention on behalf of defendants is that, prior to and at the time of the enactment of the Clayton Act, it was the law * * * that terms and restrictions such as are contained in the leases and attacked in this action 'were not offensive to the letter or policy of the law' * * *."

20. "There is nothing in the laws relating to patents which in anywise affects contracts for license, use, sale, or lease of patented articles. They are subject to the same governmental and legislative control as other contracts. * * *"

21. "In short, individual rights, whether claimed under patents or otherwise, must be subordinated to the public good, and, unless clearly arbitrary and unreasonable, courts will respect the acts of the legislative department. There are but few public regulations which do not deprive persons of rights theretofore enjoyed. As abuses, harmful to the public, are found to exist, new laws are enacted to prevent them, and they necessarily deprive those who practiced them of any right to continue them.

22. "If the business is subject to regulation, the contracts made in its conduct are subject to reguation. * * *"

23. "Conceding that the courts had previously sustained the right to make such leases and contracts as are attacked in this cause, it does not follow that the patentee has a vested right in them of which the legislature may not deprive him, if, in its opinion, they are detrimental to the public welfare. While it is true, as claimed by counsel, that by the Tenth Amendment to the Constitution the police power is reserved to the States, it is now well settled that, as the Constitution vested in Congress the exclusive power to regulate commerce among the States and grant patents, it possesses what is akin to the police power of the States, the right to regulate acts relating to them, including licenses, sales, contracts, and leases of patented articles, especially when employed in commerce among the States or foreign States. * * *."

24. "So, even if [conceding?] the claim that the former decisions relied on constitute a vested right in the patentee, it would still be subject to regulation by Congress, under the commerce as well as the

patent clauses of the Constitution, and in some matters, to the police power of the States. * * *"

25. "Besides, decisions of courts do not create rights which become vested to the extent that they may not be impaired by subsequent legislation, except as they become *res judicata* between the parties to the act and their privies. They are rules of property which will not, for slight reasons, be changed by later decisions, but even such decisions may have been overruled frequently. * * *"

26. "Of course, this does not apply to vested rights under a statute or contract based on a valuable consideration, and not subject to the police power. * * *"

27. "* * * A statute addressed to no particular person does not constitute a contract, and therefore creates no vested right, and may be repealed at any time. * * * The patent laws of the United States are addressed to no one in particular, but dictated by public policy, restrained only by the Constitution, that the patent 'secure for a limited time to inventors the exclusive right to their discovery.'"

28. "Besides, there is nothing in the national Constitution which prohibits Congress or a State from nullifying existing contracts, if, in the opinion of the legislative department, based on substantial grounds, they are injurious to the public. All contracts for a definite period must be taken to have been made subject to a possible change by law, under the police power, if the public welfare demands it, and this is to be determined by the law makers. * * *"

29. "The conclusion reached is that, while Congress can not deprive a patentee of the exclusive use of the patent, or reduce the time for which it is granted by existing law, without violating the Fifth Amendment, a patentee has no vested right in conditions of contracts for use, license, or lease of his patented invention, which Congress may not prohibit, if, in its judgment, they are injurious to the public welfare, though he may have possessed that right under the common or municipal law, as theretofore construed by the courts. * * *" *United States* v. *United Shoe Machinery Co.*, March 21, 1920, 264 Fed. 138, 147–152, 154.

CONSTITUTIONALITY—RETROACTIVE EFFECT ON EXISTING CONTRACTS.

30. "Counsel for defendant earnestly insists that, even if Congress so intended, the statute can not be so construed as to apply to preexisting contracts without violating fundamental and constitutional rights. * * *

31. "Congress derived its power to enact such legislation from the commerce clause of the Constitution, and the power so conferred is broad, comprehensive, and all-embracing. All persons entering into contracts involving interstate commerce must do so subject to the right of Congress thereafter to control, regulate, or prohibit the performance thereof. 'Every owner of property holds the same subject to such action as the sovereign power of the State may, in the exercise of its legitimate sovereignty, adopt in relation to it.' It is now too well settled to admit of controversy that a contract to do a thing, lawful when made, may be avoided by subsequent legislation making it unlawful, and that an act of Congress may lawfully affect rights which had their inception before its passage [citing

ANNOTATIONS, Sec. 3—Continued.

CONSTITUTIONALITY—RETROACTIVE EFFECT ON EXISTING CONTRACTS—Continued.

cases]." *Elliott Machine Co.* v. *Center*, Feb. 20, 1915, 227 Fed. 124, 126.

INTERSTATE COMMERCE—LEASES.

32. "It may be conceded that every lease is not commerce, but that is not conclusive that none may be. Each case must be determined from the peculiar facts shown to exist in that case. When a corporation with millions of capital, doing an annual business amounting to millions of dollars, sees proper to conduct its business by only leasing its chattels, instead of selling them, why is it not as much engaged in commerce as if it sold them outright?" *United States* v. *United Shoe Machinery Co.*, June 6, 1916, 234 Fed. 127, 143, 144.

INTERSTATE COMMERCE—LEASES—PLACE OF EXECUTION.

33. Where the contention was made that certain leases were not in the course of interstate trade upon the ground that they "were only presented to the lessee for signature and executed by him after the machines had been set up and were in operation, regardless of the fact from what State the defendants shipped them" and it appeared that "the custom then prevailing was: The shoe manufacturer would notify the local representative of the defendants that he desired to lease certain machines, whereupon a blank printed order would be handed to him. He would then insert in a blank left for that purpose the kind of machine or machines he desired and sign the application. The order is: 'Please deliver to the undersigned, upon the terms and conditions hereinafter stated, for use in the factory of the undersigned at (insert St. Louis, Mo., or wherever the factory is located) the machines,' etc.

34. "It also contains an obligation that he will hold the machines at his sole risk from injury, loss, or destruction by fire or otherwise, pay all taxes assessed and levied on them, will render full and accurate reports of the machines, pay the rental and royalties established by the defendants, and pay all shipping and transportation charges, both to and from the factory of the machinery company. An order would then be sent to the home office of the defendant Maine company in the State of Massachusetts, and, if accepted the machines would be shipped from Massachusetts, consigned to itself. Upon their arrival at the destination, they would be taken from the carrier by defendants' agent and installed in the shoe factory, and, when set up and put in operation, the lease would be executed." *Held*, that such contention can not be sustained. *United States* v. *United Shoe Machinery Co.*, Mar. 31, 1920, 264 Fed. 138, 158.

INTERSTATE COMMERCE—PLACE OF ACT OF INFRINGEMENT.

35. "If the contract involved and restrained interstate commerce, it makes no difference that the particular act of infringement occurred within the State of New York, and the prohibitions of the Clayton Act apply [citing cases]." *Motion Picture Patents Co.* v. *Universal Film Co.*, Circuit Court of Appeals, 1916, 235 Fed. 398, 401. Affirmed (1917) in 243 U. S. 502.

TYING OR EXCLUSIVE CONTRACTS OR LEASES—ABSENCE OF EXPRESS ASSENT ON PART OF LESSEE, OR COVENANTEE.

36. "But it is claimed that there is nothing in the leases whereby

the lessees covenant or bind themselves not to use any machines manufactured by other parties, or purchase materials which are dealt in by the defendants, from others. This is true, but as the lessors retained the right, in case any other machines are used in the manufacture of shoes than those manufactured by the defendants, of canceling the leases and removing the leased machines, and further provide for a rebate to those who comply with these terms, which those using other machines or material do not receive, there is an implied promise on the part of the lessees not to violate these conditions of the leases, or suffer the penalties set out in the leases.

37. "* * * The right to impose a heavy penalty for doing certain things is just as effective to prevent them as a covenant not to do them. It is therefore unnecessary that the lessees should bind themselves to these conditions or agreements by covenants. It is sufficient if the natural and inevitable effect of the leases, accepted by them, leads to the same result as if they had in express terms bound themselves not to use any other machines or materials than those manufactured or dealt in by the defendants. But, to remove any doubt upon the subject, Congress, out of abundant caution, added the words 'or understanding' after the words 'contracts or agreements.' The word 'understanding,' as defined by lexicographers, includes 'mental discernment, comprehension, clear knowledge.'" *United States* v. *United Shoe Machinery Co.*, June 6, 1916, 234 Fed. 127, 147, 148.

TYING OR EXCLUSIVE CONTRACTS OR LEASES—PRESUMPTION OF LEGALITY.

38. "* * * the statute does not create a presumption that such contracts are inherently vicious, nor does it impose upon the plaintiff the burden of proving that the contracts are not illegal. The presumption is of legality, and the burden is upon him who assumes illegality. The application of the statute should be made only upon full proofs. The consequences of applying it otherwise are too serious to be disregarded * * *." Brown, district judge, concurring in denying relief sought but dissenting as to holding contract involved unlawful under Clayton Act in *Standard Fashion Co.* v. *Magrane-Houston Co.*, June 28, 1919, 259 Fed. 793, 802.

TYING OR EXCLUSIVE CONTRACTS OR LEASES—IN PARTICULAR CASES.

See also *post*, par. 77.

39. *Held*, that a provision by which a trading stamp concern required its so-called "subscribers," who obtain under contract the right to give out these coupons (exchangeable for various premiums) by paying a consideration therefor and by agreeing to distribute the stamps only to customers does not violate the section in question. "This statute forbids the converse of the acts complained of in the present action, and we have nothing to do with what might happen if the Green Trading Stamp people were seeking to forbid the use by its subscribers of any other kind of trading stamps. This might or might not be a restriction upon competition or tend to effect a monopoly." *Sperry & Hutchinson Co.* v. *Fenster*, Jan. 16, 1915, 219 Fed. 755, 756.

40. Where the bill stated, among other things, that nearly all the shoes made in the United States are machine made; that defendants make and control 98 per cent of the shoe machinery in the United States; that defendants have business relations with nearly

ANNOTATIONS, Sec. 3—Continued.

TYING OR EXCLUSIVE CONTRACTS OR LEASES—IN PARTICULAR CASES—Continued.

all shoe manufacturers in the United States; that "some of the machines made by the defendants are designated by them as 'principal,' while others are designated 'auxiliary'"; that "The 'principal' machines can not be operated profitably without the use of some, if not all of the 'auxiliary' machines, and the latter are of no practical value, except as they are used in connection with the 'principal' machines"; that the terms under which defendants lease their machinery include the following, to wit; that the lessee

"(1) Shall not use the machine in the manufacture or preparation of footwear *which has not had* certain essential operations performed upon it by other machines leased from the lessor;

"(2) Shall use the leased machine to its fullest capacity;

"(3) Shall use *exclusively* the leased machine for the class of work for which it is designed;

"(4) Shall obtain from the lessor *exclusively*, at such price as *it* may establish, all duplicate parts and mechanisms needed in operating the leased machines, and *all supplies* in connection with them;

"(5) Shall use patented insoles made on *defendant's machinery only* in connection with certain footwear manufactured by machinery leased from the lessor;

"(6) Shall lease from the lessor any additional machinery which he may need for work in the same department as that of the machine leased;

"(7) Shall permit the *lessor to determine* whether the lessee has in his factory more machinery adapted for doing the same work than he needs, and, if so, *to remove such machines* as, *in the opinion of the lessor*, are unnecessary;

"(8) Shall, at the *election of the lessor*, suffer a termination of all leases which he may have and the removal of all machines leased by him from the defendants, in the event of the violation of any term of any one of the leases." *Held*, that reading the "act of Congress and the cases complained of together, there can be but one conclusion, and that is that all of the clauses (with the possible exception of No. 2) complained of in the bill are clearly violative of the plain words of the statute.

41. "If the court were in doubt as to the meaning of the act and of the intention of Congress in enacting it, that doubt will be readily removed by reading and considering the proceedings in both houses of Congress touching the purpose of the law." Dyer, J., granting preliminary injunction, *United States* v. *United Shoe Machinery Co.* Nov. 9, 1915, 227 Fed. 507, 508, 509.

42. Where a corporation enjoying a dominating position in the manufacture and sale or lease of shoe machines, through ownership of patents, and through contracts made by it with its lessees, leased its machinery with tying clauses providing among other things that by using no machines other than those of defendants, the lessee should be relieved of certain royalties otherwise exacted; that "if the lessees use the defendants' lasting machinery for shoes welted on machines made by other manufacturers, or fail to use exclusively defendants' machines for lasting shoes, or fail to purchase from the defendants exclusively all duplicate parts, extras, and devices of every kind, needed or used in operating, repairing, or renewing the lasting machinery, or fail to use exclusively the auxiliary machin-

ery of the lessor in the manufacture or preparation of insoles licensed under letters patent No. 849,-245, or fail to buy any additional machines needed in their shoe factory, which can be leased from the lessor," that all the leases could be canceled and the lessees be deprived of the use of them, and be compelled to pay certain royalties, which otherwise they would not have to pay. *Held*, that such leases constituted a violation of section 3.

The court stated:

43. "Can it be doubted that these provisions are not only within the spirit but the letter of the statute? What is the natural, direct, and necessary effect of these conditions? There can be but one answer to this: To compel the lessees to use defendants' machinery and material, regardless of whether the terms granted by the defendants are as favorable as can be obtained from other manufacturers of some of the machines, or dealers in some of the materials.

44. "In addition, it is charged that by reason of these leases there is no market for anyone inclined to manufacture these or some of these machines, and therefore all are deterred from engaging in their manufacture, as, there being no market for them, financial failure is bound to result from the attempt. Such a condition of affairs clearly tends to substantially lessen competition, and create, in favor of the defendants, a monopoly in that line of commerce." Trieber, J., overruling motion to dismiss in *United States* v. *United Shoe Machinery Co.*, June 6, 1916, 234 Fed. 127, 148, 149.

45. "On this record we are constrained to find that this restriction may substantially lessen competition and may tend to create a monopoly. It already appears that, out of some 52,000 pattern agencies in this country, the plaintiff or a holding company controlling it and two other pattern companies control approximately two-fifths. 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. * * *

46. "We must consider this restriction in the light of the facts peculiar to the business to which the restraint is applied, to the conditions already achieved under such restraint, as well as the nature of the restraint and its effect, actual or probable. Viewing it thus, in the light of the surrounding circumstances, we are constrained to agree with the District Court that the negative covenant in this contract may lessen competition, or may tend to create a monopoly, or both, and is therefore obnoxious to the Clayton Act [citing Chicago Board of Trade *v.* United States, 246 U. S. 231, 238]." Anderson, Circuit Judge, in *Standard Fashion Co.* v. *Magrane Houston Co.*, June 28, 1919, 259 Fed. 793, 798.

47. "To predict the consequences of the defendant's agreement not to sell or permit to be sold on its premises, during the term of the contract, any other make of patterns, it is necessary to consider the pecularities of the particular business to which the contract relates * * *."

48. "In the present case there is no evidence that any competitor of the plaintiff had ever been excluded from competition in the city of Boston or elsewhere because of inability to procure cus-

ANNOTATIONS, Sec. 3—Continued.

TYING OR EXCLUSIVE CONTRACTS OR LEASES—IN PARTICULAR CASES—Continued.

tomers or a store in which he might market his goods * * *." "* * * in the present case there is evidence that the largest competitor of the plaintiff is rapidly extending its business by affirmative contracts without restricted conditions, and has a much more dominant position in the field than the present plaintiff. I can see no ground in the record for apprehension that anybody is likely to acquire a monopoly in the dress pattern business, in which, as the evidence shows, competition is very active.

49. "I am unable to agree that this bill should be dismissed because the contract in question is unlawful under the Clayton Act * * *." Brown, District Judge, concurring in denying relief sought, but dissenting as to reasons in above case. (Pp. 800, 801, 803.)

50. *Held*, that provisions in leases made by a manufacturer of shoe machinery to the effect (1) that the lessee should use the leased machinery to its full capacity; (2) that the lessee should purchase all repair parts or mechanisms from the lessor at the lessor's regular prices; (3) that the leases should continue for 17 years unless sooner terminated by the lessor; do not, under the circumstances involved, violate any provisions of the section in question.

51. That provisions in said leases to the effect that the lessee must purchase all supplies used by it in connection with said leased machinery, exclusively from the lessor at prices established by the lessor; that the lessee must not use said leased machinery in connection with those of the lessor's competitors, or on shoes or other footwear manufactured in part on competitors' machines; violate the provisions of the section in question, notwithstanding the fact that the lessees have the choice of unrestricted leases, it appearing that the consideration for said unrestricted leases was prohibitive, notwithstanding the fact that leases executed since the enactment of the Clayton Act do not contain the objectionable clauses, it appearing that said leases are only "temporary leases," with the right reserved to the lessor to substitute or add different terms, the intention appearing to avoid the prohibitions of the section in question pending the litigation affecting the legality of the leases containing the objectionable clauses, and notwithstanding the fact that the right to declare a lease forfeited for a breach of any of the clauses involved had not up to that time been exercised.

52. That provisions to the effect that the lessor might terminate the lease for breach of any condition contained therein does not violate the section in question in so far as lawful conditions are involved, and that the provisions as to royalty are not objectionable except that which allows a discount or rebate on condition of the lessees not using competitors' machines. *United States* v. *United Shoe Machinery Co.*, Mar. 31, 1920, 264 Fed. 138, 165–169.

"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."

53. "I am satisfied with the reasoning of Judge Trieber [*United States* v. *United Shoe Machinery Co.*, 234 Fed. 127, 150] that Congress, with the full knowledge of the

construction which had been placed upon the Sherman Act by the Supreme Court, did not intend that the same construction should be placed upon the specific terms of the Clayton Act; for it chose to define the lessening of competition which it declared to be unlawful, and to do this used the word 'substantially' to make it apparent that a real, as opposed to an imaginary or fanciful lessening of competition, was intended.

54. "Doubtless a substantial lessening of competition would amount to an unreasonable restraint of trade; but I do not think it is the duty of the Court to find this before it can pronounce a contract unfair, the effect of which it has found may be to 'substantially lessen competition.'" The reports of the committees of both Houses of Congress, as well as the legislative history of the bill, show the intent of Congress to protect the public from practices which it believed to be inimical to the public good by preventing these practices from being put in operation.

55. "I think, therefore, it is the duty of the Court to determine whether or not the contract has provided means for a real or substantial lessening of competition, irrespective of what use has been or is being made of these means.

56. "By the use of the word 'may' the intent is manifest to deal with the potential evil which a contract may contain, and to make the attempt to substantially lessen competition unlawfully." Johnson, Circuit Judge, in *Standard Fashion Co.* v. *Magrane Houston Co.*, Mar. 9, 1918, 254 Fed. 493, 499. (District Court.)

57. "The mere fact that Congress enacted the Clayton Act after numerous courts had held similar or analogous restrictions [i. e., agreements on the part of the covenantee not to deal in products other than those of the seller during the term of the contract] not obnoxious to the Sherman Act, July 2, 1890, C. 647, 26 Stat. 209 (Comp. St. pars. 8820–8823, 8827–8830), or invalid at common law, or under State antitrust statutes, justifies the inference that the Legislature intended in the line of actual experience to change the law. [Citing numerous cases.]

58. "There is no answer to the suggestion of Judge Trieber in *U. S.* v. *United Shoe Machinery Co.* (D. C.), 234 Fed. 127, 150, that the presumption is, not that Congress intended that the construction of the Sherman Act should control, but on the contrary that it should not control." And again quoting from Judge Trieber: 'Evidently Congress was not satisfied to only prohibit actual lessening of competition or monopolizing, but to make it unlawful for any person to do these acts, which may put it in his power to do so.'

59. "The very title of this act is significant—'An act to *supplement* existing laws against unlawful restraint and monopolies, and for other purposes.'" *Standard Fashion Co.* v. *Magrane Houston Co.*, June 28, 1919, 259 Fed. 793, 795, 796.

60. "In order to condemn the negative covenant it is not necessary that the Court should find that it *will* lessen competition or *will* tend to create a monopoly; it is enough to find that it *may* lessen competition or *may* tend to create a monopoly."

61. "On this record we are constrained to find that this restriction may substantially lessen competition and may tend to create a monopoly. It already ap-

ANNOTATIONS, Sec. 3—Continued.

"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"—Continued.

pears that, out of some 52,000 pattern agencies in this country, the plaintiff or a holding company controlling it and two other pattern companies control approximately two-fifths. 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. * * *." Anderson, Circuit Judge in *Standard Fashion Co.* v. *Magrane Houston Co.*, June 28, 1919, 259 Fed. 793, 798.

Brown, District Judge, concurring in denying relief asked, but not in holding the contract involved unlawful under the Clayton Act.

62. "Full weight must be given to the final clause of section 3 of the Clayton Act [quoting above clause, namely, "Where the effect of such lease," etc.].

63. "In determining the effect we must consider the thing upon which the effect is to be produced. This clause seems to require that the interpretation and application of section 3, of the Clayton Act should be according to the principles stated in the opinion of Mr. Justice Brandeis in *Chicago Board of Trade* v. *United States*, 246 U. S. 231, 238, 38 Sup. Ct. 242, 244 (62 L. Ed. 683).

64. "'But the legality of an agreement or regulation can not be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates, and perhaps thereby promotes competition, or whether it is such as may suppress or even destroy competition. To determine that question the Court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint, and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, and all relevant facts. This is not because a good intention will serve an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the Court to interpret facts and to predict consequences.'"

65. "In applying the statute it must be judicially determined what the effect may be. This judgment must be more than a mere feeling of 'possibility' arising in ignorance of facts which, if known, would destroy that feeling. It must be based on knowledge and upon a reasonable belief that, in view of existing facts, there is a 'dangerous probability'" (pps. 799, 800, 801).

66. "There is nothing in the Sherman Act, or any other act of Congress, making the acts enumerated in section 3 of the Clayton Act unlawful, 'where the effect' of them 'may be to substantially lessen competition or tend to create a monopoly in any line of commerce.' Section 1 of the Sherman Act (Comp. St. sec. 8820) makes unlawful 'contract * * * in restraint of trade or commerce,'

and as construed by the Supreme Court in the above cited cases, they mean 'contracts which unduly restrain trade and commerce.' This languge differs materially from the languge used in section 3 of the Clayton Act. That contracts or leases may substantially lessen competition was not sufficient to make them unlawful under the Sherman Act, if not unduly or oppressively enforced as was held in clauses hereinbefore cited."

67. "The Clayton Act as the court construes it, is intended as a preventive act, to arrest the creation of trusts etc., in their incipiency and before consummation * * *."

68. "It is therefore unnecessary to determine whether the defendants, by the tying clauses and the discounts and rebates, have succeeded in unduly monopolizing or attempted to monopolize unduly, any part of the trade or commerce among the several States, or to unduly restrain competition in that part of commerce. The question to be decided is: Do the clauses complained of, or any of them, put it in their power, or have the effect, or tend, if enforced, as the defendants would have the right to do, if they are not unfair under the Clayton Act—and that is their intention [contention?]—'to substantially lessen competition' or 'establish a monopoly in trade'?

69. "In the opinion of the court there can be no doubt that the enforcement of some of the provisions hereinafter mentioned will have that effect. If shoe manufacturers are not permitted to use machines manufactured by competitors without being penalized, such prohibition tends to lessen competition, and eventually will result in giving the defendants a monopoly in that part of trade or commerce. Who will invest the millions necessary to establish such manufacturing plants, and the evidence convinces that it would require these large sums to establish them, when the product can not be sold, or at best can find but a very limited market? * * *" *United States* v. *United Shoe Machinery Co.*, Mar. 31, 1920, 264 Fed. 138, 161–163.

WHETHER LIMITED BY SECTION 2.

70. "In the opinion of the Court section 2 of the Act is limited to sales and not leases, and therefore does not apply to any of the acts prohibited by section 3." *United States* v. *United Shoe Machinery Co.*, Mar. 31, 1920, 264 Fed. 138, 165.

WHETHER RETROACTIVE.

71. "Counsel for defendant earnestly insists that, even if Congress so intended, the statute can not be construed to apply to preexisting contracts and to prohibit their performance and enforcement, without violating fundamental and constitutional rights. The statute does not in terms except from its operation any agreements or contracts, past, present, or future, and, in the absence of such exceptions, it is to be presumed that Congress intended to prohibit, not only the making of future contracts, but also any further performance of past contracts of the kind specified. [Continuing contracts of lease.]" *Elliott Machine Co.* v. *Center*, Feb. 20, 1915, 227 Fed. 124, 126; *United States* v. *United Shoe Machinery Co.*, Nov. 9, 1915, 227 Fed. 507, 510.

72. "Section 3 of the Clayton Act does not declare 'any contracts and leases [prohibited by that section] to be void,' but that 'it shall be unlawful for any person,' etc., 'to make such contracts,' etc. Ordinarily the word

ANNOTATIONS, Sec. 3—Continued.

WHETHER RETROACTIVE—Continued.

'shall' indicates that the act is to be prospective, and not retrospective. * * *."

73. "If there is room for doubt as to the intention of Congress, it is removed by reference to the proceedings in Congress when the bill was pending in the Senate * * *."

74. "The conclusion of the Court is that the act should not be given a retroactive construction declaring these clauses, made before its enactment, void." *United States* v. *United Shoe Machinery Co.*, Mar. 31, 1920, 264 Fed. 138, 171, 174, 175.

WORDS AND PHRASES—"UNDERSTANDING."

75. "The word 'understanding,' as defined by lexicographers, includes mental discernment, comprehension, clear knowledge * * *.

76. "Counsel contend that 'understanding' is equivalent to 'agreement,' except that it imputes that it is oral. The Court can not adopt this definition. In its opinion it means something more. It means an implied agreement, resulting from the expressed terms of the agreement, whether written or oral, or where the law from certain acts of the parties implies an agreement to do a certain act * * *." *United States* v. *United Shoe Machinery Co.*, June 6, 1916, 234 Fed. 127, 148.

IN GENERAL.

77. Provisions of this section held to strengthen conclusion that owner of a patent moving-picture projecting machine, enjoying a monopoly in the sale of motion-picture projecting machinery, by reason of such patent, can not sell the same with the condition attached that only a certain kind of films, not a part of the machine and not patented, shall be used in connection therewith. *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.*, 1916, Circuit Court of Appeals, 235 Fed. 398. Affirmed (1917) in 243 U. S. 502, 517.

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 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 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.

DECISIONS.

Frey & Son, Inc., v. *Cudahy Packing Co.*, Dec. 9, 1915, 228 Fed. 209.

American Sea Green Slate Co. v. *O'Halloran*, Dec. 14, 1915, 229 Fed. 77, 79.

Dowd v. *United Mine Workers of America*, Circuit Court of Appeals, July 21, 1916, 235 Fed. 1, 4, 6.

Vemmer v. *Pennsylvania Steel Co.*, April 18, 1918, 250 Fed. 292.

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 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 testimany has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

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.

DECISIONS.

Buckeye Powder Co. v. *Du Pont Powder Co.*, Dec. 9, 1918, 248 U. S., 55, 63, affirming *Buckeye Powder Co.* v. *E. I. Du Pont de Nemours Powder Co.*, July 2, 1915, 223 Fed. 881, 884.

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 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 individiual members of such organi-

Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE—Continued.

zations from lawfully carrying out the legitimate objects 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.

DECISIONS.

United States v. *King*, April 25, 1916, 250 Fed. 908, 909, 910.

Dowd v. *United Mine Workers of America*, Circuit Court of Appeals, July 21, 1916, 235 Fed. 1, 5.

Stephens v. *Ohio State Telephone Co.*, February 14, 1917, 240 Fed. 759, 777.

Duplex Printing Press Co. v. *Deering*, April 23, 1917, 247 Fed. 192, 195.

Paine Lumber Co. v. *Neal*, June 11, 1917, 244 U. S. 459, 483, 487.

Duplex Printing Press Co. v. *Deering*, May 25, 1918, Circuit Court of Appeals, 252 Fed. 722, 743, 747.

Montgomery v. *Pacific Electric Railway Co.*, May 26, 1919, Circuit Court of Appeals, 258 Fed. 382, 389.

Dail Overland Co. v. *Willys Overland*, December 27, 1919, 263 Fed. 171, 185, 186.

Sec. 7. ACQUISITION BY CORPORATION OF STOCK OR OTHER SHARE CAPITAL OF OTHER CORPORATION OR CORPORATIONS.

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.

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.

Purchase solely for investment excepted.

Formation of subsidiary corporations for immediate lawful business also excepted.

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, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Existing rights heretofore lawfully acquired not affected.

ACQUISITION OF STOCK, ETC., IN PARTICULAR CASES.

78. "The evidence discloses that the Boston Fish Pier Co. in 1916, acquired the stock of 25 of the corporations doing business in interstate commerce as independent wholesale fresh fish dealers on the Fish Pier, and the assets and business of Ernest F. Rich, doing business under the name of A. F. Rich & Co., and the partnerships

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ACQUISITION OF STOCK, ETC., IN PARTICULAR CASES—Continued.

of Lombard & Curtis and Fulham & Herbert, the three latter concerns being wholesale fresh fish dealers engaged in interstate trade on the pier, and that it thereafter conducted the businesses of these dealers, and all competition between them ceased. We think the acquisition of these corporations was plainly in violation of the Clayton Act, and that their combination in the Boston Fish Pier Co. must be dissolved.

79. "We also are of the opinion that the acquisition by the Bay State Fishing Co. of the stock in the 8 corporations in its combination is likewise in violation of the Clayton Act. The fact that 5 out of 8 of the corporations whose stock was taken over by the Bay State Fishing Co. were organized under the laws of Maine, to whom the Massachusetts corporations bearing the same names conveyed their businesses and assets, does not make the situation different than it would have been, and no less a violation of the Clayton Act, had it taken over the stock of the Massachusetts corporations directly. The respective Maine and Massachusetts corporations were in substance the same, and the effect of the formation of the Maine corporations, and the taking over of their stock was to defeat competition between all of the subsidiary corporations. The combination of these corporations with the Bay State Fishing Co. was therefore a violation of the Clayton Act and must be dissolved." *United States* v. *New England Fish Exchange*, July 11, 1919, 258 Fed. 732, 746.

80. "Nor does the ownership by the plaintiff of a majority of the defendant company's stock substantially or otherwise lessen competition between them (if they can at all be said to compete), or restrain commerce, or create a monopoly in any line thereof. As heretofore stated the *Tool Company* is in effect, if not in fact, a subsidiary company, engaged largely, if not wholly, in performing contracts sublet to it by the plaintiff. The case is not within the provisions of section 7 of the Clayton Act. * * *." *Niles-Bement-Pond Co.* v. *Iron Moulders' Union*, Oct. 9, 1917, 246 Fed. 851, 863, 864. (Reversed on ground of *jurisdiction* in 258 Fed. 408. Reversal affirmed on same ground by Supreme Court in opinion handed down Nov. 8, 1920.)

81. Section referred to but not passed on in *Venner* v. *Pennsylvania Steel Co.*, Circuit Court of Appeals, June 30, 1916, 233 Fed. 407, involving proposed acquisition of assets of one corporation by another corporation, alleged to violate the act; (supplementary bill) Apr. 18, 1918, 250 Fed. 292.

WHETHER RETROACTIVE.

82. Section assumed not intended to be. *Hyams* v. *Calumet & Hecla Mining Co.*, Jan. 6, 1915, Circuit Court of Appeals, 221 Fed. 529, 537.

Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER CORPORATIONS.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank 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.

Not to serve more than one bank, banking association, or trust company if deposits, capital, surplus, and undivided profits aggregate over $5,000,000.

How eligibility determined.

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

Not to serve more than one bank, banking association, or trust company located in city or incorporated town or village of more than 200,000 inhabitants.

Savings banks without capital (share) stock excepted.

Where entire stock of one bank, etc., owned by stockholders of other, also excepted.

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.

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 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.[1]

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. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits,

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.

[1] 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 5, 1916, C. 120, and act May 26, 1920, C. 206.

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.

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.

INTERLOCKING DIRECTORATES—ABSENCE OF COMPETITIVE FEATURES.

83. "Furthermore, it is to be observed that the Delaware Co.'s holdings are not in naturally competing companies. The companies named in the present record are widely separated and operate in distinct municipalities, and the gas plant here in question is the only one in the city of Holland, and is entirely within the State of Michigan. The case, therefore, does not fall within any principal opposed to the suppression of competition, as, for instance, the underlying principal of the *Northern Securities case*, 193 U. S. 197, 24 Supreme Court 436, 48 L. Ed. 679, nor within any statutory inhibition against interlocking directorates similar to that of the Clayton Act (Act Oct. 15, 1914, C. 323, 38 Stat. L. 732, sec. 8 [Comp. Stat. Sec. 8835H]) * * *." *City of Holland* v. *Holland City Gas Co.*, Circuit Court of Appeals, Feb. 13, 1919, 257 Fed. 679, 685.

IN GENERAL.

84. Provisions of section disregarded as not then operative. *Hyams* v. *Calumet & Hecla Mining Co.*, Circuit Court of Appeals, Jan. 6, 1915, 221 Fed. 529, 537.

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

Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY—Continued.

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.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

May prosecute in District Court of United States for district where offense committed.

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.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

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

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.

the members, if it be a partnership or firm, be given with the bid.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

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.

Carrier to report transactions hereunder to Interstate Commerce Commission.

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.

Commission to report violations, and its own findings to Attorney General.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

Penalty.

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.

Effective date extended to Jan. 1, 1919.

But Jan. 8, 1918, as to "corporations hereafter organized."

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, nineeen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and nineteen: *Provided*, That said section shall become effective on January eighth, nineteen hundred and eighteen, as to any corporations hereafter organized.[1]

[1] Above paragraph resolution Jan. 12, 1918. C. 8, 40 Stat. 431.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE.

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 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

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.

whole or in part, any report or any order made or issued by it under this section.

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.

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 commission 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.

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.

Findings of commission or board conclusive if supported by testimony.

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.

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 ap-

Petition by respondent to review order to cease and desist.

Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.

peals 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 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.

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.

Jurisdiction of Court of Appeals 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.

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;

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 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.

DECISIONS.

Frey & Son, Inc., v. *Cudahy Packing Co.*, Dec. 9, 1915, 228 Fed. 209.

Thorburn v. *Gates*, July 17, 1915, 225 Fed. 613, 615.

Frey & Son, Inc., v. *Cudahy Packing Co.*, Apr. 27, 1916, 232 Fed. 640.

Southern Photo Material Co. v. *Eastman Kodak Co.*, July 20, 1916, 234 Fed. 955–957.

Venner v. *Pennsylvania Steel Co.*, Apr. 18, 1918, 250 Fed. 292, 297.

Wainwright v. *Pennsylvania R. Co.*, Oct. 22 1918, 253 Fed. 459, 463.

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 criminal, arising under the antitrust laws 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.

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.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, 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 consti-

Deemed also that of individual directors, officers, etc.

Sec. 14. VIOLATION BY CORPORATION OF PENAL PROVISIONS OF ANTITRUST LAWS—Continued.

tuting in whole or in part such violation, and such viola-
A misdemeanor. tion shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be
Penalty, fine or imprisonment, or both. 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.

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
District attorneys, under direction of Attorney General, to institute proceedings. 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 pre-
Proceedings may be by way of petition setting forth the case, etc. vent 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 pro-
After due notice, Court to proceed to hearing and determination as soon as may be. hibited. 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
Pending petition instituting proceeding Court may make temporary restraining order or prohibition. 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 of justice require that other parties should be brought be-
Court may summon other parties. fore 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.

DECISIONS.

Wainwright v. *Pennsylvania R. Co.*, Oct. 22, 1918, 253 Fed. 459, 463.

Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against 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, 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.

threatened conduct that will cause loss or damage.

Temporary 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.

DECISIONS.

Union Pacific Railway Co. v. *Frank*, Circuit Court of Appeals, July 9, 1915, 226 Fed. 906, 911.

Great Atlantic & Pacific Tea Co. v. *Cream of Wheat Co.*, July 20, 1915, 224 Fed. 566, 571.

Flirtman v. *Welsbach Co.*, Jan. 24, 1916, 240 U. S. 27, 29.

Paine Lumber Co. v. *Neal*, June 11, 1917, 244 U. S. 459, 471, 480.

Venner v. *Pennsylvania Steel Co.*, Apr. 18, 1918, 250 Fed. 292.

Duplex Printing Press Co. v. *Deering*, Circuit Court of Appeals, May 25, 1918, 252 Fed. 722, 743.

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 injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire

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.

Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS—Continued.

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.

Sec. 263 of Judicial Code repealed.

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. 266 not affected.

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.

DECISIONS.

Supreme Council of Royal Arcanum v. *Hobart*, Circuit Court of Appeals, June 15, 1917, 244 Fed. 385, 390.

Mississippi Valley Trust Co. v. *Railway Steel Co.*, Circuit Court of Appeals, Apr. 19, 1919, 258 Fed. 346, 349.

Dail Overland Co. v. *Willys Overland*, Dec. 27, 1919, 263 Fed. 171, 186.

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 secur-

ity 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.

DECISIONS.

Western Union Tel. Co. v. *United States & M. T. Co.*, Circuit Court of Appeals, May 16, 1915, 221 Fed. 545, 555.

Swift v. *Black Panther Oil & Gas Co.*, Circuit Court of Appeals, May 30, 1917, 244 Fed. 20, 29, 30.

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.

DECISIONS.

Lion Tractor Co. v. *Bull Tractor Co.*, Circuit Court of Appeals, Feb. 12, 1916, 231 Fed. 156, 162.

Davis v. *Hayden*, Nov. 9, 1916, 238 Fed. 734.

Stephens v. *Ohio State Telephone Co.*, Feb. 14, 1917, 240 Fed. 759, 765, 776.

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

Not to issue unless necessary to prevent irreparable injury.

Sec. 20. RESTRAINING ORDERS OR INJJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT— Continued.

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.

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, 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.

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

Acts specified in this paragraph not to be considered violations of any law of the United States.

DECISIONS.

Alaska S. S. Co. v. *International Longshoremen's Assn.*, Sept. 5, 1916, 236 Fed. 964, 970–972.

Stephens v. *Ohio State Telephone Co.*, Feb. 14, 1917, 240 Fed. 759, 765, 769, 778.

Duplex Printing Co. v. *Deering*, Apr. 23, 1917, 247 Fed. 192, 195.

Paine Lumber Co. v. *Neal*, June 11, 1917, 244 U. S. 459, 484, 485.

Puget Sound Traction, Light & Power Co., v. *Whitley*, July 25, 1917, 243 Fed. 945–952.

Kroger Grocery & Baking Co. v. *Retail Clerks' I. P. Assn.*, Mar. 22, 1918, 250 Fed. 890, 892, 893.

Duplex Printing Press Co. v. *Deering*, Circuit Court of Appeals, May 25, 1918, 252 Fed. 722, 744, 747, 748.

United States v. *Norris*, Dec. 16, 1918, 255 Fed. 423, 424.

Montgomery v. *Pacific Electric Railway Co.*, May 26, 1919, Circuit Court of Appeals, 258 Fed. 382, 390.

Dail Overland Co. v. *Willys Overland Co.*, Dec. 27, 1919, 263 Fed. 171, 185, 186, 187.

Vonnigut Machinery Co. v. *Toledo Machine & Tool Co.*, Feb. 7, 1920, 263 Fed. 192, 197, 200–202.

Kinloch Telephone Co. v. *Local Union No. 2*, May 6, 1920, 265 Fed. 312, 315–320.

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 Sates 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.

DECISIONS.

Couts v. *United States*, Circuit Court of Appeals, March 4, 1918, 249 Fed. 595, 597.

Swepston v. *United States*, Circuit Court of Appeals, May 7, 1918, 251 Fed. 205, 210.

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 re-

Court or judge may issue rule to show cause why person charged should not be punished.

Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL. PENALTIES—Continued.

Trial if alleged contempt not sufficiently purged by return.

turn, 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,*

Failure of natural person to make return. Attachment against person.

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

If body corporate, attachment for sequestration of its property.

corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

Trial may be by court or, upon demand of accused, by jury.

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

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be en-

Penalty, fine or imprisonment, or both.

tered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the

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. 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

Court or judge may dispense with rule and issue attachment for arrest.

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.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

DECISIONS.

In re Heyman, Mar. 22, 1915, 225 Fed. 1000, 1003.

Stephens v. *Ohio State Telephone*, Feb. 14, 1917, 240 Fed. 759, 764.

Couts v. *United States*, Circuit Court of Appeals, Mar. 4, 1918, 249 Fed. 595–7.

Swepston v. *United States*, Circuit Court of Appeals, May 7, 1918, 251 Fed. 205, 210.

Toledo Newspaper Co. v. *United States*, June 10, 1918, 247 U. S. 402, 423.

Toshet v. *West Kentucky Coal Co.*, Circuit Court of Appeals, June 14, 1918, 252 Fed. 44, 45.

Sec. 23. EVIDENCE. APPEALS.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

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.

DECISIONS.

Couts v. *United* States, Circuit Court of Appeals, Mar. 4, 1918, 249 Fed. 595–7.

Swepston v. *United States*, Circuit Court of Appeals, May 7, 1918, 251 Fed. 205, 210.

Toledo Newspaper Co. v. *United States*, June 10, 1918, 247 U. S. 402, 423.

Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

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. 25. PROCEEDINGS FOR CONTEMPT. LIMITATIONS.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

Must be instituted within one year.

Not a bar to criminal prosecution.

Pending proceedings not affected.

Sec. 26. INVALIDITY OF ANY CLAUSE, SENTENCE, ETC., NOT TO IMPAIR REMAINDER OF ACT.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

But to be confined to clause, sentence, etc., directly involved.

Approved, October 15, 1914.

IN GENERAL.

RESALE PRICE MAINTENANCE.[1]

See also *ante*, par. 2.

85. Nothing found in either the Clayton or Federal Trade Commission Acts validates price restrictions by a vendor on resale of property sold absolutely by him. *Ford Motor Co.* v. *Union Motor Sales Co.*, August 1, 1917, Circuit Court of Appeals, 244 Fed. 156, 160.

RIGHT TO REFUSE TO SELL

See also *ante*, par. 2.

86. "* * *. Numerous individuals and corporations have been enjoined from restraining the

[1] See also in this general connection cases, among others, of *Straus* v. *Victor Talking Machine Co.*, Apr. 9, 1917, 243 U. S. 490, and *Boston Store* v. *American Graphophone Co.*, Mar. 4, 1918, 246 U. S. 8.

trade of other people, no matter how flourishing the offenders' trade might be, nor how greatly the general volume of trade had increased during the period of restraint. But never before has it been urged that, if J. S. made enough of anything to supply both Doe and Roe, and sold it all to Doe, refusing even to bargain with Roe, for any reason or no reason, such conduct gave Roe a cause of action. If Congress has sought to give him one, the gift is invalid, because the statute takes from one person for the private use of another the first person's private property." *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, July 20, 1915, 224 Fed. 566, 574.

87. "Before the Sherman Act it was the law that a dealer might reject the offer of a proposing buyer, for any reason that appeared 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." *Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.*, November 10, 1915, Circuit Court of Appeals, 227 Fed. 46, 49, affirming decision in 224 Fed. 566.

88. "It seems unnecessary to dwell upon the obvious difference between the situation presented when a manufacturer merely indicates his wishes concerning prices and declines further dealings with all who fail to observe them, and one where he enters into agreements—whether express or implied from a course of dealing or other circumstances—with all customers throughout the different States which undertake to bind them to observe fixed resale prices. In the first, the manufacturer but exercises his independent discretion concerning his customers and there is no contract or combination which imposes any limitation on the purchaser. In the second the parties are combined through agreements designed to take away dealers' control of their own affairs and thereby destroy competition and restrain the free and natural flow of trade amongst the States." *United States* v. *Schrader's Son, Inc.*, March 1, 1920, 252 U. S. 85, 99, reaffirming decision in *Dr. Miles Medical Co.* v. *Park & Son's Co.*, 220 U. S. 373, distinguishing the same from *United States* v. *Colgate & Co.*, 250 U. S. 300, and reversing 264 Fed. 175.

WHAT NECESSARY TO STATE CAUSE OF ACTION.

89. "It will be noticed that in this Act [the Clayton Act] there is nothing said of combinations or conspiracies, nor that the parties complained of are monopolizing or attempting to monopolize any part of the commerce among the several States, as was required in the Sherman Act. * * * Evidently Congress was not satisfied to only prohibit actual lessening of competition, or monopolizing, but to make it unlawful for any person to do those acts, which may put it in his power to do so.

90. "For these reasons, in the opinion of the Court, all that is necessary to state a cause of action under the Clayton Act is to charge that the defendants committed the acts prohibited by the statute and that they tend to substantially lessen competition or create a

ANNOTATIONS, IN GENERAL—Continued.

WHAT NECESSARY TO STATE CAUSE OF ACTION—Continued.

monopoly in interstate commerce." *United States* v. *United Shoe Machinery Co.*, June 6, 1916, 234 Fed. 127, 150.

IN GENERAL.

91. Judgments of Federal courts in determining questions under Act, independent of decisions of State courts. *Skaggs et al.* v. *Kansas City Terminal Ry. Co. et al.*, May 12, 1916, 233 Fed. 827.

92. No change has been wrought in the law of conspiracy as applicable to the case in question. *Lamar* v. *United States*, Circuit Court of Appeals, June 4, 1919, 260 Fed. 561, 563.

Act cited. *United States* v. *Rintelen et al.*, June 29, 1916, 233 Fed. 793, 799.

Section referred to in passing. *United States* v. *Colgate & Co.*, Oct. 29, 1918, 253 Fed. 522, 525.

WEBB ACT.[1]

[Approved April 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."

[1] Annotations cover cases through 265 Fed. 464 (Part 2, Advance Sheets, issued as of Aug. 26, 1920), and 40 Sup. Ct. Reporter, which disposes of all cases decided at the October term, 1919 (last decisions handed down on June 7, 1920).

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."

"TRADE WITHIN THE UNITED STATES."

On interstate commerce, see annotations to Federal Trade Commission Act, pars. 25, 26 (p. 482), 33-44 (pp. 484-486), and annotations to Clayton Act, pars. 32-35 (p. 500).

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, 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 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.

Association not illegal if organized for and engaged in export trade solely.

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.

Sec. 3. ACQUISITION BY EXPORT TRADE CORPORATION OF STOCK OR CAPITAL OF OTHER CORPORATION.

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, 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.

Lawful under Clayton Act unless effect may be to restrain trade or substantially lessen competition within 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, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export 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

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

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.

District attorneys to prosecute for recovery of forfeiture.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

Federal Trade Commission to investigate restraint of trade, artificial or intentional enhancement or depression of prices or substantial lessening of competition by association.

May recommend readjustment in case of violation.

To refer findings and recommendations to Attorney General if association fails to comply with recommendation.

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."

Commission given same powers as under Federal Trade Commission Act so far as applicable.

Approved, April 10, 1918.

IN GENERAL.

Act referred to in opinion in *United States* v. *United States Steel Corporation*, March 1, 1920, 251 U. S. 417, 453, 64 L. Ed. 222, 229, 40 Sup. Ct. 293, 300, in deciding suit to dissolve United States Steel Corporation as involved in an inconsistency in the decree proposed by the Governme t in said suit.

APPENDIX II.

DECISIONS ON PETITIONS TO REVIEW THE ORDERS OF THE COMMISSION.

SEARS, ROEBUCK & CO. v. FEDERAL TRADE COMMISSION.[1]

(Circuit Court of Appeals, Seventh Circuit. April 29, 1919. No. 2659.)

1. TRADE-MARKS AND TRADE NAMES, Key No. 80½, New, Vol. 8A, Key No. Series—UNFAIR COMPETITION.

A finding by the Federal Trade Commission that a mail-order house doing an interstate business was guilty of unfair competition in selling sugars, teas, and coffees under representations that it had obtained special price concessions because of the magnitude of its purchases, and that it purchased selected brands from abroad, held warranted.

2. TRADE-MARKS AND TRADE NAMES, Key No. 80½, New, Vol. 8A, Key No. Series—PROCEEDINGS BEFORE FEDERAL TRADE COMMISSION—INJUNCTIONAL ORDER.

An injunctional order issued by the Federal Trade Commission restraining a mail-order house doing an interstate business from certain unfair practices in connection with the sale of sugar and other staple commodities held not to have been improvidently issued because the mail-order house had discontinued such methods, where it was contending that act September 26, 1914, § 5 (Comp. St. § 8836e), creating the Federal Trade Commission, was unconstitutional, or, if valid, had not been infringed, and the Government's control of sugar sales and consumption had temporarily put an end to the objectionable practices in any event.

3. EVIDENCE, Key No. 23 (1)—JUDICIAL NOTICE—GOVERNMENT CONTROL OF TRADE.

On petition to have an injunctional order issued by the Federal Trade Commission vacated on the ground that the unfair practices of petitioner which related to sales of sugar, etc., had

[1] Reviewing order of Commission in Federal Trade Commission v. Sears, Roebuck & Co., 1 F. T. C. 163.

ceased, the court will take judicial notice of the Government's control of the sale and consumption of sugar during the war, which temporarily at least put an end to the objectionable practice.

4. TRADE-MARKS AND TRADE-NAMES, Key No. 80½, New, Vol. 8A, Key No. Series—UNFAIR COMPETITION—FEDERAL TRADE COMMISSION.

Act September 26, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission authority over unfair methods of competition and declaring the same unlawful, is not void for indefiniteness because the words "unfair methods of competition" were not defined, the trader being entitled to his day in court, where common-law principles would control.

5. CONSTITUTIONAL LAW, Key No. 62, 80(2)—UNLAWFUL DELEGATION OF LEGISLATIVE AND JUDICIAL POWER.

Act September 26, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission power to stop unfair methods of competition in commerce and declaring the same unlawful, is not an unlawful delegation of legislative and judicial power, Congress having by the act declared the public policy applicable to the situation.

6. TRADE-MARKS AND TRADE-NAMES, Key No. 80½, New, Vol. 8A, Key No. Series—POWERS OF FEDERAL TRADE COMMISSION—UNFAIR COMPETITION.

The Federal Trade Commission, under its authority to stop unfair methods of competition, can not prevent a trader from selling a staple article as sugar below cost, although it may prevent such sales accompanied by representations which would injure other traders.

(The syllabus is taken from 258 Fed. Rep. 307.)

Alschuler, circuit judge, dissenting in part.

Original petition to review order of Federal Trade Commission.

Original petition by Sears, Roebuck & Co. against the Federal Trade Commission, to review an order commanding petitioner to desist from certain unfair methods of competition in commerce. Commission directed to modify its orders, and petition in other respects denied.

Sidney Adler, of Chicago, Ill., for petitioner.

John Walsh, of Chicago, Ill., for respondent.

Before Baker and Alschuler, circuit judges, and Carpenter, district judge.

Baker, circuit judge, delivered the opinion of the court:

This is an original petition to review an order entered by the respondent, the Federal Trade Commission, against the petitioner, Sears, Roebuck & Co., a corporation, commanding the petitioner to desist from certain

unfair methods of competition in commerce. Respondent's order was based on its complaint, filed on February 26, 1918, on the petitioner's answer, and on a written stipulation of facts. Procedure before the Commission and also before this court on review is prescribed in section 5 of the act to create a Federal Trade Commission, approved on September 26, 1914. Respondent's authority over the subject matter of its order is derived from the following provision in the same section: "Unfair methods of competition in commerce are hereby declared unlawful." Section 4 is a dictionary of terms used in the act. "Commerce" means interstate or foreign commerce; but the general term, "unfair methods of competition," is nowhere defined specifically, nor is there a schedule of methods that shall be deemed unfair.

In its complaint respondent averred that petitioner is engaged in interstate and foreign commerce, conducting a "mail-order" business; that petitioner for more than two years last past has practiced unfair methods of competition in commerce by false and misleading advertisements and acts, designed to injure and discredit its competitors and to deceive the general public, in the following ways:

1. By advertising that petitioner, because of large purchases of sugar and quick disposal of stock, is able to sell sugar at a price lower than others offering sugar for sale;

2. By advertising that petitioner is selling its sugar at a price much lower than that of its competitors and thereby imputing to its competitors the purpose of charging more than a fair price for their sugar;

3. By selling certain of its merchandise at less than cost on the condition that the customer simultaneously purchase other merchandise at prices which give petitioner a profit on the transaction, without letting the customer know the facts;

4. By advertising that the quality of merchandise sold by its competitors is inferior to that of similar merchandise sold by petitioner, and that petitioner buys certain of its merchandise in markets not accessible to its competitors and is therefore able to give better advantages in quality and price than those offered by its competitors.

Petitioner extensively circulated the following advertisements, among others:

We can afford to give this guarantee of a "less than wholesale price" because we are among the largest distributors of sugar, wholesale or retail, in the world. We sell every year thirty-five million pounds of sugar. And, buying in such vast quantities, and buying directly from the refiners, we naturally get our sugar for less money than other dealers.

For instance, every grocer carries granulated sugar in stock, but does he tell you which kind? There are two kinds—granulated cane sugar and granulated beet sugar—and they look exactly alike. Some people prefer the one and some the other. But beet sugar usually costs less than cane sugar, so if you are getting beet sugar you should pay less for it. Do you know which kind you are getting and which you are paying for?

Our teas have a pronounced, yet delicate, tea flavor with an appealing fragrance, because we spare neither time nor expense to get the very best the greatest tea gardens of the world can produce.

First, because of the difficulty of getting in this country the exact character and flavor of certain teas, we do our own importing and critically test every tea. Our representative goes to the various tea-growing countries and makes the selection in person. Then, the greatest care is taken to get only first-crop pickings from upland soil.

Also, by buying direct from the tea gardens, while the crops are being harvested, we are able to have them always perfectly fresh.

It would be natural for you to conclude that all this care in buying and selecting would make our teas very high in price, but in reality, our prices are unusually low for such high quality. Here is a reason: By buying direct from the tea gardens we cut out the middleman's profit.

Over land and sea, from the greatest coffee regions in the world we bring you the choicest of the crop, and make it possible for you to have that fresh, savory, and fragrantly tempting cup of coffee for your breakfast. You see, we buy direct from the best plantations in the world. We get the pick of the crop—upland coffees from rich, healthy soil and growers of unquestioned experience and skill. We buy enormous quantities and pay cash, thus making it possible to offer our customers the very best coffees at very low prices.

Petitioner's sales of sugar during the second half of 1915 amounted to $780,000 on which it lost $196,000. Petitioner used sugar as a "leader" ("You save 2 to 4 cents on every pound"), offering a limited amount at the losing price in connection with a required purchase of other commodities at prices high enough to afford petitioner a satisfactory profit on the transaction as a whole, without letting the customer know that the sugar was being sold on any other basis than that of the other commodities. Petitioner obtained its sugar in the open market from refiners and wholesalers. Competitors got their sugar from the same sources, of the same quality, and at the same price. Sugar is a staple in the market. Price concessions upon large purchases are unobtainable. From the facts respecting petitioner's methods of advertising and buying and selling sugar respondent found, and properly so, in our judgment, that petitioner intentionally injured and discredited its competitors by falsely leading the public to believe that the competitors were unfair dealers in sugar and the other commodities which petitioner was offering in connection with sugar.

Petitioner purchased 75 per cent of its teas from wholesalers and importers in the United States. The remainder it purchased through its representative Peterson in Japan; but there was no proof that Peterson made or was qualified to make "selections in person" or "first-crop pickings from upland soil." All of petitioner's coffees were purchased from wholesalers and importers in the United States. Respondent found that petitioner's advertisements of teas and coffees were false and designed to deceive the public and injure competitors.

By the order, issued on June 24, 1918, petitioner was commanded to desist from—

(1) Circulating throughout the States and Territories of the United States and the District of Columbia, catalogues containing advertisements offering for sale sugar, wherein it is falsely represented to its customers or prospective customers of said defendant or to customers of competitors, or to the public generally or leads them to believe, that because of large purchasing power and quick-moving stock, defendant is able to sell sugar at a price lower than its competitors;

(2) Selling, or offering to sell, sugar below cost through catalogues circulated throughout the States and Territories of the United States and the District of Columbia among its customers, prospective customers, and customers of its competitors;

(3) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, and customers of its competitors, catalogues containing advertisements representing that defendant's competitors do not deal justly, fairly, and honestly with their customers;

(4) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its teas, in which said advertisements it falsely stated that the defendant sends a special representative to Japan, who personally goes into the tea gardens of said country and personally supervises the picking of such teas;

(5) Circulating through the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its coffees, in which it falsely stated, that the defendant purchases all of its coffees direct from the best plantations in the world.

I. Petitioner insists that the injunctional order was improvidently issued because, before the complaint was filed and the hearing had, petitioner had discontinued the methods in question and, as stated in its answer, had no intention of resuming them. For example, no sugar offers of the character assailed were made after August, 1917. But respondent was required to find from all the evidence before it what was the real nature of petitioner's attitude. It was permissible for respondent to take judicial notice of the Government's wartime control of sugar sales and consumption. It was also proper to note that petitioner was contending (and still contends) that the act is void for indefiniteness, that the act is unconstitutional, and that the act, even if valid, under any proper construction has not been infringed by petitioner's practices. In Goshen Mfg. Co. *v.* Myers Mfg. Co. (242 U. S., 202), which was a suit for infringement of a patent, the defendant company averred and introduced evidence to prove that six months before the bill was filed and with notice to complainant it had sold its factory, wound up its business, and had no intention of resuming. But throughout the intervening period and also in the answer to the bill the defendant company was attacking the validity of the patent and the right of the complainant

to compel desistance. This conduct was held to be such a continuing menace as to justify the maintenance of the bill. So here, no assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course.

II. Petitioner urges that the declaration of section 5 must be held void for indefiniteness unless the words "unfair methods of competition" be construed to embrace no more than acts which on September 26, 1914, when Congress spoke, were identifiable as acts of unfair trade then condemned by the common law as expressed in prior cases. But the phrase is no more indefinite than "due process of law." The general idea of that phrase as it appears in constitutions and statutes is quite well known; but we have never encountered what purported to be an all-embracing schedule or found a specific definition that would bar the continuing processes of judicial inclusion and exclusion based upon accumulating experience. If the expression "unfair methods of competition" is too uncertain for use, then under the same condemnation would fall the innumerable statutes which predicate rights and prohibitions upon "unsound mind," "undue influence," "unfaithfulness," "unfair use," "unfit for cultivation," "unreasonable rate," "unjust discrimination," and the like. This statute is remedial, and orders to desist are civil; but even in criminal law convictions are upheld on statutory prohibitions of "rebates or concessions" or of "schemes to defraud," without any schedule of acts or specific definition of forbidden conduct, thus leaving the courts free to condemn new and ingenious ways that were unknown when the statutes were enacted. Why? Because the general ideas of "dishonesty" and "fraud" are so well, widely, and uniformly understood that the general term "rebates or concessions" and "schemes to defraud" are sufficiently accurate measures of conduct.

On the face of this statute the legislative intent is apparent. The Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The Commissioners, representing the Government as parens patriae, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases. But the restraining order of the Commissioners is merely provisional. The trader is entitled to his day in court, and there the same principles and tests that have been applied under the common law or under statutes of the kinds hereinbefore recited are expected by

Congress to control. This prima facie reading of legislative intent is confirmed by reference to committee reports and debates in Congress, wherein is disclosed a refusal to limit the Commission and the courts to a prescribed list of specific acts (Cong. Rec., 63d Cong., 2d sess., pp. 13, 18, 533, 12246). And this interpretation is not affected by the subsequent adoption of the Clayton Act, October 15, 1914, condemning certain specific acts.

III. But such a construction of section 5, according to petitioner's urge, brings about an unconstitutional delegation of legislative and judicial power to the Commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. Buttfield *v.* Stranahan, 192 U. S. 470; Union Bridge Co. *v.* United States, 204 U. S. 365; Penn. Rd. Co. *v.* International Coal Co., 230 U. S. 184; National Pole Co. *v.* Chicago & N. W. Ry. Co., 211 Fed. 65.

With the increasing complexity of human activities many situations arise where governmental control can be secured only by the "board" or "commission" form of legislation. In such instances Congress declares the public policy, fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress. Though the action of the Commission in finding the facts and declaring them to be specific offenses of the character embraced within the general definition by Congress may be deemed to be quasi legislative, it is so only in the sense that it converts the actual legislation from a static into a dynamic condition. But the converter is not the electricity. And though the action of the Commission in ordering desistance may be counted quasi judicial on account of its form, with respect to power it is not judicial, because a judicial determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court.

IV. In the second paragraph of the order petitioner is commanded to cease selling sugar below cost. 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. But manifestly in making such a sale or gift the owner may put forward representations and commit acts which have a capacity or a tendency to injure or to discredit competitors and to deceive purchasers as to the real character of the transaction. That paragraph should therefore be modified by adding to it "by means of or in connection with the representations prohibited in the first paragraph of this order, or similar representation."

Sufficient appears in this record and in the presentation of the case to warrant us in expressing the belief that petitioner's business standards were at least as high as those generally prevailing in the commercial world at the time in question, and that the action of the Commission is to be taken rather as a general illustration of the better methods required for the future than a specific selection of petitioner for reproof on account of its conduct in the past.

Respondent is directed to modify its order as above stated; and in other respects the petition is

Denied.

By ALSCHULER, *Circuit Judge.*

In my judgment the order of the Commission should be further modified by striking out the third paragraph, which relates to alleged representation that petitioner's competitors do not deal fairly and honestly with their customers. In so far as the sugar, coffee, and tea advertisements ascribe petitioner's asserted lower prices and superior qualities to quantity purchases and special facilities and advantages for inspection, selection, and purchasing, they would tend to negative any imputation upon competitors of unfair dealing with their patrons. I believe the charge of imputing to competitors unfair dealing with their patrons rests wholly on petitioner's so-called "Caveat emptor" advertisement in its catalogue of March and April, 1916, wherein the public is cautioned in regard to white sugar, stating that some is cane and some beet sugar, alike in appearance, but the former usually higher in price; that petitioner plainly designates which of the two it offers, and the query is suggested, where else are goods so plainly described, and whether the customer gets elsewhere what he thinks he is buying. It seems to me that this does not amount to more than a statement or boast that petitioner, without being asked, describes the white sugars it proposes to sell, and the intimation is carried that competitors do not volunteer such description, but it is not suggested that they actually misrepresent the truth.

The facts before the Commission appear by stipulation, and those concerning this advertisement, aside from the advertisement itself, are as follows:

When Mr. A. M. Daly, the attorney in charge of the investigation in these proceedings was in Chicago, in March, 1916, he submitted to Mr. A. V. H. Mory, chief chemist of Sears, Roebuck & Co., and Mr. Joseph Scott, manager of the grocery department, a copy of the advertisement entitled "Caveat emptor" hereinbefore mentioned, and hereto attached, and requested them to state their views as to this particular advertisement and what it meant. They stated that this advertisement was for the purpose of calling attention to the distinction between beet sugar and cane sugar and laying stress upon the point of the facilities that Sears, Roebuck & Co. have for marking everything plainly so that the customer would know better from description the exact nature of

what he was buying. After this explanation Mr. Daly went to his hotel. In a short time Mr. Mory called on him there and stated in substance that he had submitted the above-mentioned advertisement to Mr. A. H. Loeb, the vice president of Sears, Roebuck & Co., and that Mr. Loeb said that this course of advertising was unfair and unjust and declared that it must be discontinued, and further that it was against the policy of the house to send out such advertisements. Thereupon, on March 28, 1916, Mr. A. V. H. Mory, chief chemist, wrote to the Commission in part as follows: "The young man who wrote this was in to-day, and I pointed out to him wherein he had made a mistake and acted against house policy. He promised to use the soft pedal on all references to the dealer in the future. He tells me that this is an angle that had not occurred to him. He had not thought of the write-up in the light of a criticism of the dealer, so intent was he in pointing out that with our system of marking everything plainly and our facilities for knowing what we are selling, the customer would know better from our description the exact nature of what he was buying, in the case of those things difficult to judge, than if he had them placed before him, which of course is true."

But, assuming, as did petitioner's vice president, that this advertisement does carry the imputation that competitors deal unfairly with their customers, under the circumstances indicated by the quotation ought this advertisement to be the basis of a finding and order? The publication was in the catalogue for March and April, 1916. The complaint was filed nearly two years afterwards. The act authorizes the Commission to proceed when it shall have reason to believe that unfair methods of competition are or have been used, "and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public." In a monitory proceeding such as this seems to be, it could hardly be said that it would be "of interest to the public" to predicate action on a transgression for which due amends had long before been made, without remotest cause to believe there would be a repetition. To revive a stale advertisement of this nature which the advertiser immediately after the publication distinctly disavowed as having been unintentionally and inadvertently unfair to competitors, and ordered discontinued, without directly or indirectly repeating or renewing it for so long an interval, far from subserving the public interest, might, in my judgment, have the contrary tendency of raising an imputation of oppressive or at least uncalled-for action, in predicating any proceeding or order on this advertisement.

Nor am I impressed with the authoritative relevancy here of decisions respecting injunctions. In a proceeding such as this, neither remedial nor punitive decisions of courts respecting injunctional relief in equity are not more analogous than are common-law decisions defining

unfair trade practices, arising out of controversies between individuals, as fixing thereby the limitation of the Commission's authority or scope.

The suggested modification would necessitate corresponding modification of the Commission's findings of facts, eliminating paragraphs numbered 4 and 5 thereof. Paragraphs 2, 6, and 7 (as well as pars. 4 and 5) of the findings state the circulation of the several advertisements to have been in each case for "more than two years last past," indicating thereby the two years next before the date of the findings, which is June 24, 1918. This is in contravention of the stipulated fact that none of the advertisements were more recent than August, 1917—some of them even antedating the passage, September 26, 1914, of the Trade Commission act itself. These findings should, in my judgment, be modified to comply with the stipulated fact.

FEDERAL TRADE COMMISSION v. GRATZ ET AL.[1]

(Circuit Court of Appeals, Second Circuit. May 14, 1919. No. 236.)

TRADE-MARKS AND TRADE-NAMES, Key No. 80½ New, Vol. 8A, Key No. Series—UNFAIR COMPETITION—POWERS OF FEDERAL TRADE COMMISSION.

Act September 26, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission power to investigate unfair methods of competition, does not contemplate the prohibition of unfair methods of competition between individuals, there being no authority given to individuals to present grievances, hence where defendants, who engaged in selling ties and bagging for cotton bales, refused to sell to persons with whom they had had previous unsatisfactory relations, and refused to sell ties without bagging when there was fear that, owing to the scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by creating corners in ties, the Commission is not authorized to make any order compelling such sales. The unfair methods contemplated by the act are such as affect the public generally.

(The syllabus is taken from 258 Fed. Rep. 314.)

[1] Reviewing order of Commission in Federal Trade Commission *v.* Gratz et al., 1 F. T. C. 249. See same case in Supreme Court, 253 U. S. 421 and *infra*, at pp. 564–579.

Petition to revise order of the Federal Trade Commission.

Petition of Warren, Jones & Gratz, by Anderson Gratz, for an order for the review of the findings and order of the Federal Trade Commission, and for an order setting the same aside, in a proceeding against Anderson Gratz and Benjamin Gratz, copartners doing business under the firm name and style of Warren, Jones & Gratz, and others. Order reversed.

T. F. Magner, of Brooklyn, N. Y., for petitioner.

John Walsh, of Washington, D. C., for respondent.

Before Ward, Hough, and Manton, circuit judges.

WARD, *Circuit Judge:*

This is a petition of Anderson Gratz, a member of the firm of Warren, Jones & Gratz, under section 5 of the act of September 26, 1914, 38 Stat. L. 730, creating the Federal Trade Commission, to review the following order of the Commission:

> Therefore, it is ordered, that the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy a proportionate amount of American Manufacturing Co.'s bagging; and further that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Co.'s bagging, or any amount of cotton bagging of any kind.
>
> By the Commission:
>
> [SEAL.] L. L. BRACKEN, *Secretary.*

If Anderson Gratz has not sufficient standing to file this petition, counsel for the Commission has very fairly waived the objection and invited the court to dispose of the questions raised.

The first count of the complaint served on the respondents, which is the only one involved, is as follows:

> PARAGRAPH 1. That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis, and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Co., of Pittsburgh, Pa., and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Co., of St. Louis, Mo.
>
> PAR. 2. That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg, and State

of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

PAR. 3. That with the purpose, intent, and effect of discouraging and stifling competition in interstate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused, to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

The respondents filed an answer admitting the facts stated in paragraphs 1 and 2, but denying the facts stated and the conclusion therefrom contained in paragraph 3. They appeared and offered testimony before the Commission.

The Commission's material findings of fact and its conclusions of law are as follows:

PAR. 2. That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. * * *

PAR. 4. * * * The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Co., and in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Co., from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging, and against other dealers and distributors in the material known as sugar-bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and second-hand bagging, 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 there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act. (Act Oct. 15, 1914, C. 323, 38 Stat. 731 [Comp. St. ¶ 8835 c].)

By agreement between the parties the Commission filed a transcript of the entire record in the proceeding before it. This court is given power by the act to affirm, modify, or set aside such an order, the Commission's findings of fact to be conclusive if supported by testimony. There is testimony to support the findings of fact and therefore the question before us is whether they do support the Commission's conclusion of law that the method of competition forbidden is unfair within the meaning of section 5 of the act of September 26, 1914.

It seems to us that unfair methods of competition between individuals are not contemplated by the act. Congress could not have intended to submit to the determination of the Commission such questions as whether a person, partnership, or corporation had treated or bribed the employees of a competitor for the purpose of inducing them to betray their employer. We think the unfair methods, though not restricted to such as violate the antitrust acts, must be at least such as are unfair to the public generally. It seems to us that section 5 is intended to provide a method of preventing practices unfair to the general public and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the antitrust acts. Such a preliminary inquiry and determination constitutes a most important supplement in carrying out the public policy which those acts are intended to vindicate. This view is confirmed by the language of the section:

> 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.

No authority is given to any individual to present his grievances, and the Commission is to interpose only in the interest of the public.

That the Commission did not find sufficient proof to sustain the second count in the complaint, viz. that the method of the respondents found to be unfair violated section 3 of the act of October 15, 1914, known as the Clayton Act, which makes unlawful any condition, agreement, or understanding that may lessen competition or tend to create a monopoly, shows that the method found to be unfair must have been unfair in certain individual transactions. And we discover no evidence to support

the finding in paragraph 2 that the respondents "adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging." It is the natural and prevailing custom in the trade to sell ties and bagging together, just as one witness testified it is to sell cups and saucers together. Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917, when there was fear that, owing to scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties. The evidence is that with these exceptions the respondents sold ties without any restrictions to all who wanted to buy, and indeed made extraordinary efforts to induce the manufacturers of ties to increase their output so that all legitimate dealers and all cotton raisers should get enough ties and bagging at reasonable rates to market their cotton. It is only these exceptional and individual cases, which established no general practice affecting the public that can sustain the findings in paragraph 4.

Counsel for the Commission calls our attention to the opinion of the Circuit Court of Appeals for the Seventh Circuit, Sears, Roebuck & Co., Petitioners, *v.* Federal Trade Commission, Respondent, 258 Fed. Rep. 307. The practice there prohibited as unfair was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to discredit all competitors. It was clearly a method unfair to the public generally.

As we think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufacturing Co.'s bagging, and that the Commission has no jurisdiction to determine the merits of specific individual grievances, the order is reversed.

WARD BAKING CO. v. FEDERAL TRADE COMMISSION.[1]

(Circuit Court of Appeals, Second Circuit. February 26, 1920.)

No. 90.

COMMERCE. KEY NO. 40—(1) SALES BY AGENTS FROM WAGONS SENT ACROSS STATE LINE NOT INTERSTATE COMMERCE.

Where a baking company sends its wagons across a state line in charge of its drivers, who call on retail dealers and then and there sell and deliver bread to them, the sales do not constitute interstate commerce, subject to regulation by the Federal Trade Commission.

(The syllabus is taken from 264 Fed. Rep. 330.)

Petition to Review Order of Federal Trade Commission.

Proceeding before the Federal Trade Commission against the Ward Baking Co. On petition to review an order of the Federal Trade Commission. Order reversed.

Eugene H. Hickok, for petitioner.

Edward L. Smith (Claude R. Porter and W. T. Roberts, both of Washington, D. C., of counsel) for respondent.

Before Ward, Rogers, and Manton, circuit judges.

WARD, *Circuit Judge:*

November 26, 1917, the Federal Trade Commission filed a complaint under section 5 of the act of September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes," against the Ward Baking Co. on the ground that the company had at periods of several consecutive days in the year 1917 given gratis to each purchaser of its bread in certain places a quantity of bread equal to the amount of the purchase with the intent of suppressing competition in the manufacture and sale of bread in interstate commerce and that a proceeding by the Commission in respect thereof would be to the interest of the public.

The company filed an answer, denying this charge, appeared and offered testimony at the hearing. The Com-

[1] Reviewing order of Commission in Federal Trade Commission v. Ward Baking Co., 1 F. T. C. 388.

mission made a report and findings of which the material finding for the purposes of this opinion is:

PARAGRAPH THREE. That respondent during the said month of May, in the year 1917, for a period of about four weeks, in the cities of New Bedford and Fall River, in the State of Massachusetts, and other towns and cities in said State, and also in the towns of North Tiverton and Stone Bridge, in the State of Rhode Island, did give to all who purchased bread from it an amount of bread equal to the amount so purchased with the intent and purpose of suppressing and stifling competition in the sale of bread in the towns and cities named in the State of Massachusetts and the State of Rhode Island, and that all the bread so sold and given away in the State of Rhode Island, during said period when said free bread campaign was being so conducted, was manufactured at the city of Cambridge, in the State of Massachusetts, and shipped by the said respondent from the city of Cambridge to the city of Fall River, both in the State of Massachusetts, and from said city of Fall River was distributed by wagons, trucks, and other conveyances across the State line and into the State of Rhode Island, in the vicinity of North Tiverton and Stone Bridge, and there given away to purchasers of bread from said respondent in the manner and form aforesaid, and that said bread so given away and distributed in the State of Rhode Island was transported and sold in interstate commerce across the state line dividing the State of Massachusetts and the State of Rhode Island, for the purpose and with the effect of stifling and suppressing competition in interstate commerce as aforesaid.

This method of competition the Commission held to be unfair. September 2, 1919, the Commission entered an amended order requiring respondent to desist from the practice:

Now, therefore, it is ordered that the respondent, Ward Baking Company, its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly initiating or carrying on, in the course of interstate commerce, any so-called free-bread campaign, or any practice of supplying bread free of cost to retail dealers in quantities equal to those purchased from respondent by such dealers, or in any other quantities, where such practice is calculated to or does stifle or suppress competition in the manufacture and sales of bread.

It appeared from the testimony that the respondent transported the bread in question in its own wagons from Fall River, Mass., to Tiverton and Stone Bridge, R. I.; their wagons calling at the retail stores in those places and their drivers then and there selling the respondent's bread to such storekeepers as wanted to buy, and then and there delivering additional bread gratis to the purchaser.

Doubtless bread sold in Massachusetts to be delivered to the purchaser in Rhode Island would be interstate commerce, but that is not this case. Moreover, the Commission is not finding the act of transportation from Massachusetts to Rhode Island unfair, but the method of local sales made in Rhode Island. If the respondent had its own stores in Rhode Island, and carried to them from Massachusetts bread to be there sold, this method of selling could not be considered interstate commerce.

The question arose in respect of the right of the city of Covington, a municipality of Kentucky, to impose a license tax upon the business of an Ohio corporation making sales in exactly this way in Kentucky. The Supreme Court held that such sales were subject to the tax, and not invalid as a regulation of interstate commerce. Wagner *v.* The City of Covington, 251 U. S. 95 (Dec. 8, 1919). Mr. Justice Pitney said at pp. 99 and 103:

> Plaintiffs were and are manufacturers of such drinks, having their factory and bottling works in the City of Cincinnati, in the State of Ohio, on the opposite side of the Ohio River from Covington. They have carried on and do carry on the business of selling in Covington soft drinks, the product of their manufacture, in the following manner: They have a list of retail dealers in Covington to whom they have been and are in the habit of making sales. Two or three times a week a wagon or other vehicle owned by plaintiffs is loaded at the factory in Cincinnati and sent across the river to Covington, and calls upon the retail dealers mentioned, many of whom have been for years on plaintiff's list and have purchased their goods under a general understanding that plaintiffs' vehicle would call occasionally and furnish them with such soft drinks as they might need or desire to purchase from plaintiff. When a customer's place of business is reached by the vehicle the driver goes into the storeroom and either asks or looks to see what amount of drinks is needed or wanted. He then goes out to the vehicle and brings from it the necessary quantity, which he carries into the store and delivers to the customer. Upon his trips to Covington he always carries sufficient drinks to meet the probable demands of the customers, based on past experience; but, with the exception of occasional small amounts carried for delivery in response to particular orders previously received at plaintiffs' place of business in Cincinnati, all sales in Covington are made from the vehicle by the driver in the manner mentioned. * * *
>
> Of course the transportation of plaintiffs' goods across the state line is of itself interstate commerce; but it is not this that is taxed by the city of Covington, nor is such commerce a part of the business that is taxed, or anything more than a preparation for it. So far as the itinerant vending is concerned the goods might just as well have been manufactured within the State of Kentucky; to the extent that plaintiffs dispose of their goods in that kind of sales, they make them the subject of local commerce; and, this being so they can claim no immunity from local regulations, whether the goods remain in original packages or not.

As interstate commerce is not involved, the order is reversed.

NEW JERSEY ASBESTOS CO. v. FEDERAL TRADE COMMISSION.[1]

(Circuit Court of Appeals, Second Circuit. February 26, 1920.)

No. 91.

1. EVIDENCE KEY NO. 21.—JUDICIAL NOTICE TAKEN OF BUSINESS PRACTICE TO ENTERTAIN CUSTOMERS AND THEIR EMPLOYEES.

The court takes judicial notice that the practice of entertaining customers and employees of customers by furnishing them liquor, cigars, meals, theater tickets, etc., found by the Federal Trade Commission to be unfair, has been an incident of business from time immemorial, especially as expenditures for such purposes are recognized as a proper deduction by the income tax regulations.

2. MASTER AND SERVANT KEY NO. 30 (4)—GIFTS TO EMPLOYEE TO INDUCE CONTRACT IS FRAUD, JUSTIFYING DISCHARGE.

The payment of money or the giving of valuable presents to an employee to induce him to influence his employer to make a contract of purchase is a fraud, justifying the employee's discharge within his contract term of service.

3. TRADE-MARKS AND TRADE NAMES KEY NO. 80½ NEW, VOL. 8A KEY-NO. SERIES—FEDERAL TRADE COMMISSION WITHOUT JURISDICTION TO REGULATE ENTERTAINMENT OF CUSTOMER'S EMPLOYEES.

The practice of a company engaged in interstate commerce in entertaining employees of its customers with liquor, cigars, meals, theater tickets, etc., is not a matter so affecting the public as to be within the jurisdiction of the Federal Trade Commission.

(The syllabus is taken from 264 Fed. 509.)

Petition to Review Order of Federal Trade Commission.

Petition by the New Jersey Asbestos Company for review of an order of the Federal Trade Commission. Order reversed.

Robert W. Crawford, of New York City, for petitioner.

Edward L. Smith, of Washington, D. C. (Claude R. Porter and Charles S. Moore, both of Washington, D. C., of counsel), for respondent.

Before Ward, Rogers, and Manton, circuit judges.

[1] Reviewing order of Commission in Federal Trade Commission *v.* The New Jersey Asbestos Co., 1 F. T. C. 472.

WARD, *Circuit Judge:*

January 6, 1919, the Federal Trade Commission issued a complaint against the New Jersey Asbestos Company, under Section 5 of the Act of September 26, 1914 (Comp. St. ¶ 8836e), entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," alleging that the company had during the year 1918 been giving to employees of its customers and prospective customers liquors, cigars, meals, theater tickets, valuable presents, and sums of money and entertainments to induce them to influence their employers to purchase the company's products and that a proceeding by the Commission in respect thereof would be to the interest of the public.

The company filed an answer, admitting that it is engaged in interstate as well as intrastate business and that it had paid reasonable amounts in furnishing entertainment to employees of customers and as incidental to such entertainment had supplied liquors, cigars, meals, and theater tickets, but denying that this was done for the purpose of inducing them to influence their employers to buy its goods, and especially denying that it ever gave them valuable presents or sums of money.

The charge of giving valuable presents and sums of money has been abandoned by the Commission. May 27, 1919, the Commission filed its report, and two findings of fact, and its conclusion of law as follows:

First. That the respondent, the New Jersey Asbestos Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of New York, in the State of New York, and is now, and for more than one year last past has been, engaged in manufacturing and selling engine packings composed of asbestos, metal and asbestos, flax, wood fiber and kindred products throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

Second. That said respondent, the New Jersey Asbestos Co., in the course of its business of manufacturing and selling engine packings composed of asbestos, metal and asbestos, flax, wood fiber and kindred products throughout the States and Territories of the United States, for more than one year last past has been lavishly giving gratuities, such as liquor, cigars, meals, theater tickets, and entertainment to employees of customers as an inducement to influence their employers to purchase or to contract to purchase from the said respondent, the New Jersey Asbestos Co., engine packings composed of asbestos, metal and asbestos, flax, wood fiber and kindred products without other consideration therefor.

CONCLUSION.

That the methods set forth in the foregoing findings of fact, under all the circumstances therein set forth, are 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."

The findings of fact being mere conclusions, it is necessary to examine the evidence to see whether they are supported by any testimony or not. It shows that the officers of the company in the year 1918 did entertain at the company's expense both customers and employees of customers, and that the salesmen down to May 1 were employed on a salary or on a salary and commission basis, and were allowed to charge in their monthly accounts reasonable lump sums for entertainment. After May 1 they were on a commission basis only, and any entertainment given by them was given at their own expense.

We have held in Federal Trade Commission *v.* Gratz, 258 Fed. Rep. 314, that only unfair practices which affect the public as distinguished from individuals, are within the jurisdiction of the Commission. We take judicial notice of the fact that the method of entertainment found to be unfair has been an incident of business from time immemorial. It is recognized by article 133 of the regulations covering the assessment of income tax promulgated January 2, 1918, as follows:

Spending money. So-called spending or treating money, if actually advanced by corporations to their traveling salesmen to be used by them as a part of the expenses incident to selling the product of such corporations, is an allowable deduction in a return of income by such corporations. The deduction of such expenditures is conditioned upon a satisfactory showing that all the allowance claimed as a deduction was actually expended for and was an ordinary and usual expense incurred in selling the product or merchandise of the corporation.

The payment of money or the giving of valuable presents to an employee to induce him to influence his employer to make a contract of purchase is a fraud justifying the discharge of the employee within his contract term of service, and perhaps the recovery by the purchaser of the amount or value of such inducement from the seller, upon the theory that it must have been included in the price. But even in such a case we think it would be a matter between individuals, and not one so affecting the public as to be within the jurisdiction of the Commission, under our decision in the Gratz case. However, it stretches theory to the breaking point to suppose that the entertainment expenses found unfair in this case constitute fraud practiced by the respondent and by the employees on the purchasers of the respondent's goods. It is difficult to conceive that the purchaser would have a right to recover the amount of such entertainment as a part of the price paid for the goods bought, or that he would have a right to discharge the employee within the term

of his service on this ground. So broad a construction of the statute would bring within the disposition of the Commission a vast number of subjects and controversies which in their nature belong to the legislative and judicial departments of the Government. For instance, advertising is a method of selling goods which, without increasing their merits, increases their cost; and so does securing servants of competitors by paying them higher wages, though we suppose no one would say the act gives the Commission a right to regulate these matters.

The order is reversed.

BEECH-NUT PACKING CO. v. FEDERAL TRADE COMMISSION.[1]

(Circuit Court of Appeals, Second Circuit. February 26, 1920.)

No. 92.

TRADE-MARKS AND TRADE-NAMES KEY 80½, NEW, VOL. 8A KEY-NO. SERIES—MANUFACTURER HELD NOT SUBJECT TO ORDER OF FEDERAL TRADE COMMISSION; "UNFAIR METHOD OF COMPETITION."

That a manufacturer of products sold in interstate commerce to jobbers and wholesale dealers, who in turn sell to other jobbers and wholesale and retail dealers, issues circulars to its trade suggesting prices for resale, both at wholesale and retail, and refuses to continue to sell to any dealer who fails to maintain such prices, or who sells to another dealer failing to maintain them, in the absence of contracts requiring adherence to such prices, *Held* not to constitute an "unfair method of competition," in violation of Federal Trade Commission Act Sept. 26, 1914 (Comp. St. Par. 8836e).

(The syllabus is taken from 264 Fed. 885.)

Petition to Review Order of Federal Trade Commission.

Petition by the Beech-Nut Packing Co. to review an order of the Federal Trade Commission. Order reversed.

Charles Wesley Dunn, of New York City (Charles E. Hughes, of New York City, of counsel), for petitioner.

Edward L. Smith, of Washington, D. C. (Claude R. Porter and Marshal B. Clarke, both of Washington,

[1] Reviewing order of Commission in Federal Trade Commission v. Beech-Nut Packing Co., 1 F. T. C. 516. Petition for certiorari filed by the Commission in the United States Supreme Court May 10, 1920, and granted June 1, 1920.

D. C., and Joseph A. Burdeau, of New York City, of counsel), for respondent.

Before Ward, Hough, and Manton, circuit judges.

WARD, *Circuit Judge:*

April 15, 1918, the Federal Trade Commission issued a complaint against the Beech-Nut Packing Co. under section 5 of the act of Congress of September 26, 1914 (Comp. St. ¶ 8836e), entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," charging the company with using an unfair method of competition in interstate commerce, viz. in selling its products to such purchasers, principally wholesalers and jobbers, as do not resell at a price lower than that fixed by the company and in refusing to sell to such as do, with the purpose of eliminating competition in the sale of the company's products and that a proceeding by the Commission in respect to this method would be to the interest of the public.

The company appeared and answered, admitting these facts, but denying that it had entered into any agreement with purchasers requiring them to maintain its prices, or in any way qualifying their title to the articles purchased, or restricting their freedom to sell to anyone and charge any price they chose.

An agreed statement of facts was filed. June 30, 1919, the Commission filed its report and findings.

The respondent is engaged in interstate commerce in selling divers food products, such as sliced bacon, sliced beef, peanut butter, candies, chewing gum, etc., under the trade name "Beech-Nut Brand." The Commission's findings of fact are very long, and it will be sufficient for the purposes of our decision to state the following:

PARAGRAPH FOUR. That respondent customarily markets its products principally through jobbers and wholesalers in the grocery, drug, candy, and tobacco lines, who in turn resell to retailers in these lines, all of which wholesale and retail dealers are selected as desirable customers for the reason that they are known or believed to be (*a*) of good credit standing; (*b*) willing to resell at the resale prices suggested by respondent and who do resell at such prices, as hereinafter set forth; (*c*) willing to refuse to sell and who do refuse to sell to jobbers, wholesalers and retailers who do not resell at the resale prices suggested by respondent, and who do not sell to such jobbers, wholesalers and retailers as also hereinafter set forth; (*d*) good and satisfactory merchandisers in other respects. Such jobbers, wholesalers, and retailers are designated by the respondent as "selected" or "desirable" dealers. Respondent also sells "direct" in a few instances to certain large retailers who are selected on the same basis as the aforesaid jobbers, wholesalers, and retailers. The total number of such dealers handling the products of respondent includes the greater proportion of the jobbers, wholesalers, and retailers, respectively, in the grocery trades, and a large proportion of the jobbers, wholesalers, and retailers in the drug, candy, and tobacco trades, respectively, throughout the United States.

PARAGRAPH FIVE. That respondent, in the sale and distribution of its products has adopted and maintained, and still maintains, policy known as the "Beech-Nut Policy," and requests the cooperation therein of all dealers selling the products manufactured by it, dealing with each customer separately.

PARAGRAPH SEVEN. In order to carry out said Beech-Nut policy and to secure such cooperation, respondent

(*a*) Issues circulars, price lists and letters to the trade generally showing suggested uniform resale prices, both wholesale and retail, to be charged for Beech-Nut products.

(*b*) Requests and insists that the aforesaid selected jobbers, wholesalers, and retailers resell only at the suggested resale prices.

(*c*) Requests and insists that the aforesaid selected jobbers, wholesalers, and retailers sell only to such other jobbers, wholesalers, and retailers as have been and are willing to resell and do resell at the prices so suggested by the respondent; and requests and insists that such jobbers, wholesalers, and retailers discontinue selling to other jobbers, wholesalers, and retailers who fail to resell at the prices so suggested by respondent.

(*d*) Makes it known broadcast to such selected jobbers, wholesalers and retailers, whether sold "direct" or not, that if they, or any of them, fail to sell at the resale prices suggested by the respondent as aforesaid, respondent will absolutely refuse to sell further supplies of its products to them, or any of them, and will also absolutely refuse to sell any jobbers, wholesalers, and retailers whatsoever who sell to other jobbers, wholesalers, or retailers failing to resell at the prices suggested by respondent.

PARAGRAPH EIGHT. That respondent, in the carrying out of said policy

(*a*) Has within the time aforementioned refused and does refuse to sell its products to practically all such jobbers, wholesalers, and retailers as do not resell at the prices so suggested by the respondent.

(*b*) Has within the time aforementioned refused and does refuse to sell to practically all such jobbers, wholesalers and retailers reselling to other jobbers, wholesalers, and retailers who have failed to resell at the prices so suggested by the respondent.

(*c*) Has within the time aforementioned refused and does refuse to sell to practically all so-called mail-order houses engaged in interstate commerce, on the ground that such mail-order houses frequently sell at cut prices, and has within the time aforementioned refused and does refuse to sell to practically all jobbers, wholesalers, and retailers who sell its products to such mail-order houses.

(*d*) Has within the time aforementioned refused and does refuse to sell to practically all so-called price-cutters.

(*e*) Has maintained within the time aforementioned and does maintain a large force of so-called specialty salesmen or representatives who call upon the retail trade and solicit orders therefrom to be filled through jobbers and wholesalers, which orders are commonly known in the trade as "turnover orders"; that respondent's salesmen, under its instructions, have within the time aforementioned refused and do refuse to accept any such turnover orders to be filled through jobbers and wholesalers who themselves sell or have sold at less than the suggested resale prices or sell or have sold to jobbers, wholesalers, and retailers who sell or have sold at less than such suggested resale prices; and in such cases have requested such retailers to name other jobbers.

(*f*) Has within the time aforementioned reinstated and does reinstate as distributors of its products, jobbers, wholesalers, and retailers previously cut off or withdrawn from the list of selected jobbers, wholesalers, and retailers for failure to resell at the prices suggested by the respondent and/or for selling to distributors who do not maintain such suggested resale prices, upon the basis of

declarations, assurances, statements, promises, and similar expressions, as the case may be, by said distributors, respectively, which satisfy the respondent that such distributors will thereafter resell at the prices suggested by the respondent and/or will refuse to sell to distributors who do not maintain such suggested resale prices.

(*g*) Has within the time aforementioned added and does add to its list of new distributors, concerns reported by its representatives as declaring that they intend to and will resell at the prices suggested by the respondent, and/or will refuse to sell to distributors who do not maintain such suggested resale prices.

(*h*) Has within the time aforementioned utilized a system of key numbers or symbols stamped or marked upon the cases containing "Beech-Nut Brand" products, thus enabling the respondent, for any purpose whatsoever, to ascertain the identity of the distributors from whom such products were purchased; and that repeatedly, within the time aforementioned, when instances of price cutting have been reported to respondent by the selected wholesalers and retailers, or ascertained in other ways, its salesmen and representatives have been instructed by respondent to investigate, and that in pursuance of these instructions salesmen and representatives of respondent have by means of these key numbers or symbols traced the price cutters from whom the goods have been obtained and have thus ascertained the identity of such price cutters, and have also thus traced and ascertained the identity of distributors from whom price cutters have purchased "Beech-Nut Brand" products; and have thereafter refused to supply all such dealers with its products, whether such dealers were themselves cutting the suggested resale prices or were selling to dealers cutting the suggested resale prices.

(*i*) Has within the time aforementioned maintained and does maintain card records containing the names of thousands of jobbing, wholesale, and retail distributors, including the aforesaid selected distributors, and in furtherance of its refusals to sell goods either to distributors selling at less than the suggested resale price, or to distributors selling to other distributors selling at less than the suggested resale prices, has listed upon those cards bearing the names of such distributors the words "Undesirable—Price cutters," "Do not sell," or "D. N. S.," the abbrevation for "Do not sell" or expressions of a like character, to indicate that the particular distributor was not, in the future, to be supplied with respondent's goods on account of failure to maintain the aforesaid suggested resale prices or on account of failure to discontinue selling to dealers failing to maintain such suggested resale prices. When respondent has received declarations, assurances, statements, promises, and similar expressions, as the case may be, by said distributors, respectively, which satisfy the respondent that such distributors will resell at the prices suggested by the respondent, and/or discontinue selling to distributors failing to maintain the resale prices suggested by respondent, said respondent has issued instructions to "Clear the record," or directions of similar import, notation of which is made on the cards, and has thereafter permitted shipments of its products to be made to such distributors; and such distributors to whom shipments are thus allowed to go forward constitute the respondent's list of so-called "selected" jobbers, wholesalers, and retailers, and no distributor is thus listed on such card records as one to whom goods are allowed to go forward who fails to maintain the resale prices suggested by respondent or sells to distributors failing to resell at such suggested prices; and when a jobber, wholesaler, or retailer is reported as failing to maintain the suggested resale prices, and/or as selling to distributors who fail to maintain such suggested resale prices, and has been entered in the card records as one to whom shipments should not go forward, respondent notifies those jobbers, wholesalers, and retailers who

supply said distributor of this fact, and also notifies its specialty salesmen, and gives similar notices to said jobbers, wholesalers, and retailers and to its specialty salesmen when reinstatements are made in its said list of "selected" jobbers, wholesalers, and retailers.

The Commission's conclusion of law is:

That the methods of competition set forth in the foregoing findings are, 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."

June 30, 1919, the order under review issued as follows:

Now, therefore, it is ordered that respondent, Beech-Nut Packing Co., its officers, directors, agents, servants, and employees cease and desist from, directly or indirectly, recommending, requiring, or by any means bringing about the resale of Beech-Nut products by distributors, whether at wholesale or retail, according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

1. Refusing to sell to any such distributors because of their failure to adhere to any such system of resale prices.

2. Refusing to sell to any such distributors because of their having resold respondent's said products to other distributors who have failed to adhere to any such system of resale prices.

3. Securing or seeking to secure the cooperation of its distributors in maintaining or enforcing any such system of resale prices.

4. Carrying out or causing others to carry out a resale price maintenance policy by any other means.

The subject is one affecting the public generally and plainly within the jurisdiction of the Commission. The ground upon which the conclusion of law rests is that the method is unfair, because its stifles competition and so restrains trade. The obvious purpose of the respondent is to prevent any competition as to the resale price between purchasers of its products. Such a method founded upon an agreement between a manufacturer and purchasers severally, was held to be a violation of the Sherman Act (Comp Sts. ¶s 8820–8823, 8827–8830) in Dr. Miles Medical Co. v. Park & Sons Co., 220 U. S. 370. It is difficult to say why a different conclusion should be reached, if the same result is attained by acquiescence and cooperation without express agreement between the manufacturer and his purchasers severally. Eastern States Retail Lumber Association *v.* United States, 234 U. S. 600. But we understand the Supreme Court to hold in United States *v.* Colgate & Co., 250 U. S. 300, that a similar but less drastic method of sale constitutes merely the exercise of a man's right to do what he will with his own and is not obnoxious to the Sherman Act.

The facts as found by the Commission, being supported by testimony, are conclusive; but the effect of them is a question of law, to be expressed in a conclusion of law, and the Commission so describes it. We do not see how this

conclusion can be sustained in face of the decision in the Colgate case.

The order is reversed.

MANTON, *Circuit Judge* (concurring):

I concur in the result here announced and will state my reasons:

In considering the cases which arise under the jurisdiction of the Federal Trade Commission, the distinction between the Sherman Act (July 2, 1890, chap. 647, 26 Stat. 209) and the act which creates and defines the jurisdiction and duties of the Federal Trade Commission (Act of Congress, Sept. 26, 1914, chap. 315, sec. 5, 38 Stat. 719) must be kept in mind. The purposes of the Sherman Act and of the Federal Trade Commission act are different. The Sherman Act is intended for the prohibition of contracts and combinations in restraint of trade which are of sufficient force of oppression or coercion as amount to a monopoly or trust. In order for the Government to succeed in an equity or criminal action, or for a private litigant to succeed, where he seeks damages as a result of such alleged trust or combination, each must successfully bear the burden of establishing a combination which restrains trade. No such obligation is imposed upon the Federal Trade Commission before its order may issue requiring an individual, partnership, or corporation engaged in commerce, to desist from a practice which might lead eventually to an unlawful trust or combination which would be in restraint of trade. Section 5 of the Federal Trade act prohibits unfair methods of competition in commerce, declaring them unlawful. This act forbids all unfair methods of competition. It does not define what is unfair competition, but leaves that to the Commission for determination. Section 5 provides that the Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, by [from?] using methods of unfair competition in commerce. It will thus be observed that there is no restriction or qualification to the powers thus conferred, but the method of commerce must be unfair.

This legislation appears to be analogous to that provided for in the creation of the Interstate Commerce Commission. The Interstate Commerce Act conferred the powers upon the commission to enforce any order or orders provided in the act that it might issue, and it gives to the Interstate Commerce Commission the power to issue an order to cease and desist a violation. B. & O. R. Co. *v.* Pitcairn Coal Co., 215 U. S. 481. The Interstate Commerce Commission was created for the purpose of receiving and correcting any abuse or injustice perpetrated

upon shippers by railroads or injustice to the railroads. What were reasonable rates was to be determined by the commission. It was held by the Supreme Court, with respect to enjoining or setting aside the orders of the commission by the Federal courts, that authority of the courts, in reviewing their determination, was confined to whether there had been violations of the Constitution or of the power conferred by statute or any exercise of power so arbitrary as to virtually transcend the authority conferred. Kansas City Ry. Co. *v.* United States, 231 U. S. 423; Interstate Commerce Commission *v.* L. & N. Ry. Co., 227 U. S. 88. The Federal Trade Commission Act provides that when an order is made and it is based upon a finding of unfair competition supported by evidence, it is conclusive upon the courts, and this court so held in Federal Trade Commission *v.* Gratz, 258 Fed. Rep. 314.

In my opinion, Congress had in mind in this legislation the prevention of acts which amount to unfair competition at their very inception. In this manner, the antitrust law was supplemented. To make successful either a criminal prosecution or other liability under the Sherman Act, it is necessary to find that a trust or monopoly is created which restrains trade. One act which may be an act of unfair competition may, of itself, restrain trade and may do damage to a complainant. The Federal Trade Commission Act was intended to reach such an unfair business method where the antitrust law could not do so. Of course, if all unfair acts were dealt with by the Federal Trade Commission, there would be no monopoly or trust created. It was intended by section 5 of the act to prevent practices or methods of business unfair to the public which, if not prevented, would grow and create monopolies, and thus restrain trade and lessen competition. In the case of Dr. Miles Medical Co. *v.* Park & Son, 220 U. S. 373, the Supreme Court held that where the defendant successfully prevented competition by fixing resale prices between purchasers of the products of the defendant, this amounted to a restraint of trade, and was a violation of the Sherman Anti-trust Act of July 2, 1890. The only difference between the price fixing of the Dr. Miles case and the price fixing in the "Beech-Nut merchandizing policy," which the Federal Trade Commission in the case at bar has found offensive as an unfair method of competition, is that in the former case there was an agreement in writing provided for, while in the latter the success or failure of the plan depended upon a tacit understanding with the purchasers and prospective purchasers. It is difficult to see any difference between a written agreement and a tacit understanding. In each case, if the agreement, written or unwritten, is not lived up to, it means that the prospec-

tive purchaser could not buy or obtain the goods he wished. This may of itself create a restraint of trade. In the case of Boston Store *v.* American Graphophone Co., 246 U. S. 8, speaking of the Dr. Miles case, the court said:

> It was decided that under the general law the owner of movables (in that case, proprietary medicines compounded by a secret formula) could not sell the movables and lawfully, by contract, fix a price at which the product should afterwards be sold, because to do so would be at one and the same time to sell and retain, to part with and yet to hold, to project the will of the seller, so as to cause it to control the movable parted with when it was not subject to his will, because owned by another, and thus to make the will of the seller unwarrantedly take the place of the law of the land as to such movables. It was decided that the power to make the limitation as to price for the future could not be exerted consistently with the prohibitions against restraint of trade and monopoly contained in the antitrust law.

In the plan of the petitioner herein called a "suggestion," which in truth is a tacit understanding, to do precisely what was done in the Dr. Miles case, disobedience of the "suggestion" would result in a failure to be able to buy further from the petitioner. It has been held that the trader or manufacturer who carries on an entirely private business may sell to whom he pleases. U. S. *v.* Trans-Missouri Freight Assn., 166 U. S. 290. And this case was approved in United States *v.* Colgate, 250 U. S. 300. However, in the Colgate case the court dealt solely with the purpose of the antitrust act in its prohibition of monopolies, contracts, and combinations which interfere with the free exercise of the rights of a merchant to engage in trade and commerce. The court said that in the absence of any purpose to create or maintain a monopoly, the act does not restrict the right of a trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to the parties with whom he will deal. It distinguishes the Dr. Miles case for the reason that it was found in this case there existed an unlawful combination which was effected through contracts which undertook to prevent dealers from freely exercising the right to sell. Referring to the facts in the Colgate case, the court said:

> Considering all said in the opinion[1] (notwithstanding some serious doubts), we are unable to accept the construction placed upon it by the Government. We can not, e. g., wholly disregard the statement that "The retailer, after buying, could, if he chose, give away his purchase or sell it at any price he saw fit, or not sell it at all; his course in these respects being affected only by the fact that he might by his action incur the displeasure of the manufacturer who could refuse to make further sales to him, as he had the undoubted right to do." And we must conclude that, as interpreted below, the indictment does not charge Colgate & Co. with selling its products to dealers under agreements which obligated the latter not to resell except at prices fixed by the company.

[1] In the court below.

In view of this recent pronouncement in the Colgate case and even accepting the finding of facts of the Commission, I think we are forced to the conclusion that the acts found and charged in the method of doing business under the "Beech-Nut merchandizing policy" are not unfair methods of competition and that therefore this court must hold, as a matter of law, that the Commission exceeded its power in making the order appealed from.

FEDERAL TRADE COMMISSION v. GRATZ ET AL.[1]

(Argued April 20 and 21, 1920. Decided June 7, 1920.)

No. 492.

1. TRADE-MARKS AND TRADE-NAMES, KEY NO. 80½, NEW, VOL. 8A, KEY-NO. SERIES—FEDERAL TRADE COMMISSION'S ORDER TO DESIST FROM UNFAIR COMPETITION MUST BE BASED ON SUFFICIENT COMPLAINT.

Under act September 26, 1914, paragraph 5 (Comp. St. par. 8836e), providing that, when the Federal Trade Commission has reason to believe that a person, etc., has used an unfair method of competition, it shall formulate and serve a complaint, stating the charges, and after a hearing, if it deems the method of competition in question prohibited thereby, shall issue an order requiring the accused to cease and desist from using such method, if the complaint is plainly insufficient to show unfair competition, there is no foundation for an order to desist.

2. TRADE-MARKS AND TRADE-NAMES, KEY NO. 80½, NEW, VOL. 8A, KEY-NO. SERIES—FEDERAL TRADE COMMISSION'S ORDER MUST FOLLOW COMPLAINT.

An order of the Federal Trade Commission to cease and desist from using a specified method of competition, under act September 26, 1914, paragraph 5 (Comp. St. par. 8836e), should follow the complaint; otherwise it is improvident, and, when challenged, will be annulled by the court.

3. TRADE-MARKS AND TRADE-NAMES, KEY NO. 80½, NEW, VOL. 8A, KEY-NO. SERIES—WHAT CONSTITUTES UNFAIR METHODS OF COMPETITION A QUESTION FOR THE COURT.

Under act September 26, 1914, paragraph 5 (Comp. St. par. 8836e), declaring unfair methods of competition in commerce unlawful, it is for the courts, and not for the Federal Trade Commission, ultimately to determine as matter of law what constitutes unfair methods of competition.

4. TRADE-MARKS AND TRADE-NAMES, KEY NO. 68—"UNFAIR METHODS OF COMPETITION" DO NOT INCLUDE PRACTICES NOT HERETOFORE CONDEMNED.

Act September 26, 1914, paragraph 5 (Comp. St. par. 8836e), declaring "unfair methods of competition" unlawful, does not

[1] 253 U. S. 421. See case in court below, at pp. 545–549 (this volume).

apply 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.

[ED. NOTE.—For other definitions, see Words and Phrases, First and Second Series, Unfair Competition.]

5. TRADE-MARKS AND TRADE-NAMES, KEY NO. 80½, NEW, VOL. 8A, KEY-NO. SERIES—COMPLAINT FILED BY FEDERAL TRADE COMMISSION INSUFFICIENT TO SHOW UNFAIR METHODS OF COMPETITION.

A complaint filed by the Federal Trade Commission under act September 26, 1914, paragraph 5 (Comp. St., par. 8836e), charging that sellers of cotton ties and bagging and their selling and distributing agents, with the purpose and effect of discouraging and stifling competition in the sale of such bagging, had refused to sell ties, unless the purchaser would buy from them a corresponding amount of bagging, was insufficient to support an order to desist from such practice, where it did not intimate that they did not properly obtain their ties and bagging, or state the amount controlled by them, or allege that they held a monopoly of either ties or bagging, or had ability, purpose, or intent to acquire one, or allege anything justifying the conclusion that the public suffered injury, or that competitors had reasonable ground for complaint.

6. TRADE-MARKS AND TRADE-NAMES, KEY NO. 68.—MERCHANT MAY REFUSE TO SELL COTTON TIES AND BAGGING, EXCEPT IN CONJUNCTION.

All questions of monopoly or combination being out of the way, a private merchant, acting with entire good faith, may properly refuse to sell, except in conjunction, such closely associated articles as steel ties used for binding bales of cotton and jute bagging used to wrap such bales.

(The syllabus is taken from 40 Sup. Ct. 572.)

Mr. Justice Brandeis and Mr. Justice Clarke dissenting.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Proceeding by Anderson Gratz and another, doing business as Warren, Jones & Gratz, and others, against the Federal Trade Commission, to set aside an order of the Commission. The order was annulled by the Circuit Court of Appeals for the Second Circuit (258 Fed. 314, 169 C. C. A. 330), and the Commission brings certiorari. Affirmed.

(See also 250 U. S. 657, 40 Sup. Ct. 13, 64 L. Ed. 51.)

Messrs Huston Thompson, of Washington, D. C., Alexander C. King, of Atlanta, Ga., and Claude R. Porter, of Washington, D. C., for petitioner.

Mr. Thomas F. Wagner, of Brooklyn, N. Y., for respondents.

Mr. Justice McREYNOLDS delivered the opinion of the court.

By an act approved September 26, 1914 (c. 311, 38 Stat. 717 [Comp. St. ¶s 8836a–8836k]), Congress made provision for the Federal Trade Commission and declared its powers.

Section 4 defines commerce as: "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."

SECTION 5. That unfair methods of competition in commerce are hereby declared unlawful. The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce. Whenever the commission shall have reason to believe that any such person, partnership, or corporation, has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least 30 days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * 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.

Section 5 further provides that the Commission may apply to the designated Circuit Court of Appeals to enforce an 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 the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission. The findings of the Commission as to the facts, if supported by testimony, shall be conclusive.

* * * The 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 by section 240 of the Judicial Code. 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 an enforcement of its order, and the findings of the Commission as to the facts, if supported by testimony, shall in like manner be conclusive."

Sections 6 and 7 empower the Commission to require reports and compile information concerning corporations; to inquire concerning execution of decrees restraining violations of the antitrust acts; to investigate alleged violations of such acts; to recommend readjustments of corporate business; to publish information and make reports to Congress; to classify corporations and make rules and regulations; to investigate trade conditions; to act, under orders of the court, as a master in chancery in certain designated circumstances, etc.

Undertaking to proceed under section 5, June 4, 1917, the Commission issued a complaint containing two counts against respondents. The first related to unfair methods of competition, and the second charged violation of section 3 of the Clayton Act, approved October 15, 1914 (c. 323, 38 Stat. 730, Comp. St. ¶ 8835c). Respondents denied both charges. After taking much testimony the Commission held there was no evidence to support the second count; but it ruled that respondents had practiced unfair competition and ordered that they—"their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy, a proportionate amount of American Manufacturing Co.'s bagging, and further that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Co.'s bagging, or any amount of cotton bagging of any kind."

Upon respondents' petition the Circuit Court of Appeals, Second Circuit, annulled the Commission's order, 258 Fed. 314. It said, "We think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same

time the necessary amount of the American Manufacturing Co.'s bagging, and that the Commission has no jurisdiction to determine the merits of specific individual grievances."

The challenged order is based solely upon the first count of the complaint, which follows:

Federal Trade Commission *v.* Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it that Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer, all of whom are 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 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," 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:

I.

PARAGRAPH ONE.—That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis and State of Missouri, and are engaged in the business of selling in interstate commerce, either directly to the trade or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Co., of Pittsburgh, Pa., and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Co., of St. Louis, Mo.

PARAGRAPH TWO.—That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

PARAGRAPH THREE.—That with the purpose, intent, and effect of discouraging and stifling competition in interstate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused, to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

It is unnecessary now to discuss conflicting views concerning validity and meaning of the act creating the Commission and effect of the evidence presented. The judgment below must be affirmed, since, in our opinion, the first count of the complaint is wholly insufficient to charge respondents with practicing "unfair methods of competition in commerce" within the fair intendment of those words. We go no further and confine this opinion to the point specified.

When proceeding under section 5, it is essential, first, that, having reason to believe a person, partnership, or corporation has used an unfair method of competition in commerce, the Commission shall conclude a proceeding "in respect thereof would be to the interest of the public"; next, that it formulate and serve a complaint stating the charges "in that respect" and give opportunity to the accused to show why an order should not issue directing him to "cease and desist from the violation of the law so charged in said complaint." If after a hearing the Commission shall deem "the method of competition in question is prohibited by this act," it shall issue an order requiring the accused "to cease and desist from using such method of competition."

If, when liberally construed, the complaint is plainly insufficient to show unfair competition within the proper meaning of these words there is no foundation for an order to desist; the thing which may be prohibited is the method of competition specified in the complaint. Such an order should follow the complaint; otherwise it is improvident and, when challenged, will be annulled by the court.

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.

Count one alleges, in effect: that Warren, Jones & Gratz are engaged in selling, either directly to the trade or through their corespondents, cotton ties produced by the Carnegie Steel Co., and also jute bagging manufactured by the American Manufacturing Co. That P. P. Williams & Co., of Vicksburg, and C. O. Elmer, of New Orleans, are the selling and distributing agents of Warren, Jones & Gratz, and as such sell and distribute their ties and bagging to jobbers and dealers, who resell them to re-

tailers, ginners, and farmers. That with the purpose and effect of discouraging and stifling competition in the sale of such bagging all the respondents for more than a year have refused to sell any of such ties unless the purchaser would buy from them a corresponding amount of bagging—6 yards with as many ties.

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.

Nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. All question of monopoly or combination being out of the way, a private merchant, acting with entire good faith, may properly refuse to sell, except in conjunction, such closely associated articles as ties and bagging. 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. United States *v.* Colgate, 250 U. S. 300; United States *v.* A. Schrader's Son, Inc. (Mar. 1, 1920), 252 U. S. 85.

The first count of the complaint fails to show any unfair method of competition practiced by respondents and the order based thereon was improvident.

The judgment of the court below is

Affirmed.

Mr. Justice PITNEY concurs in the result.

Mr. Justice BRANDEIS dissenting, with whom Mr. Justice CLARKE concurs.

First. The court disposes of the case on a question of pleading. This, under the circumstances, is contrary to established practice. The circumstances are these:

The pleading held defective is not one in this suit. It is the pleading by which was originated the proceeding before the Federal Trade Commission, an administrative tribunal, whose order this suit was brought to set aside. No suggestion was made in the proceeding before the Commission that the complaint was defective. No such objection was raised in this suit in the court below. It was not made here by counsel. The objection is taken now for the first time and by the court.

This suit, begun in the Circuit Court of Appeals for the Second Circuit, was brought to set aside an order of

the Federal Trade Commission. Before the latter the matter involved was thoroughly tried on the merits. There was a complaint and answers. Thirty-five witnesses were examined and cross-examined. A report of proposed findings as to facts was submitted by the examiner and exceptions were filed thereto. Then, the case was heard before the Commission, which made a finding of facts, stated its conclusions as to the law, and ultimately issued the order in question. The proceedings occupied more than 16 months. The report of them fills 400 pages of the printed record. In my opinion, it is our duty to determine whether the facts found by the Commission are sufficient in law to support the order; and also, if it is questioned, whether the evidence was sufficient to support the findings of fact.

Second. If the sufficiency of the complaint is held to be open for consideration here, we should, in my opinion, hold it to be sufficient. The complaint was filed under section 5 of the Federal Trade Commission Act, which declares unlawful "unfair methods of competition in commerce"; empowers the Commission to prevent their use; and directs it to issue and serve "a complaint stating its charges in that respect" whenever it has reason to believe that a concern "has been or is using" such methods. The function of the complaint is solely to advise the respondent of the charges made so that he may have due notice and full opportunity for a hearing thereon. It does not purport to set out the elements of a crime like an indictment or information, nor the elements of a cause of action like a declaration at law or a bill in equity. All that is requisite in a complaint before the Commission is that there be a plain statement of the thing claimed to be wrong so that the respondent may be put upon his defense. The practice of the Federal Trade Commission in this respect, as in many others, is modeled on that which has been pursued by the Interstate Commerce Commission for a generation and has been sanctioned by this as well as the lower Federal courts. United States Leather Co. *v.* Southern Ry. Co., 21 I. C. C. 323, 324; Clinton Sugar Refining Co. *v.* C. & N. W. Ry. Co., 28 I. C. C. 364, 367; Stuarts Draft Milling Co. *v.* Southern Ry. Co., 31 I. C. C. 623, 624; New York Central, etc., R. R. Co. *v.* Interstate Commerce Commission, 168 Fed. 131, 138–139; Dickerson *v.* Louisville & Nashville R. R. Co., 187 Fed. 874, 878; Texas & Pacific Ry. *v.* Interstate Commerce Commission, 162 U. S. 197, 215; Cincinnati, Hamilton & Dayton Ry. Co. *v.* Interstate Commerce Commission, 206 U. S. 142, 149.

The complaint here under consideration stated clearly that an unfair method of competition had been used by respondents, and specified what it was, namely, refusing to sell cotton ties unless the customer would purchase

with each six ties also six yards of bagging. The complaint did not set out the circumstances which rendered this tying of bagging to ties an unfair practice. But this was not necessary. The complaint was similar in form to those filed with the Interstate Commerce Commission on complaints to enforce the prohibition of "unjust and unreasonable charges" or of "undue or unreasonable preference or advantage" which the act to regulate commerce imposes. It is unnecessary to set forth why the rate specified was unjust or why the preference specified is undue or unreasonable, because these are matters not of law but of fact to be established by the evidence. Pennsylvania Co. *v.* United States, 236 U. S. 351, 361. So far as appears neither this nor any other court has ever held that an order entered by the Interstate Commerce Commission may be set aside as void, because the complaint by which the proceeding was initiated, failed to set forth the reasons why the rate or the practice complained of was unjust or unreasonable; and I can not see why a different rule should be applied to orders of the Federal Trade Commission issued under section 5.[1]

In considering whether the complaint is sufficient, it is necessary to bear in mind the nature of the proceeding under review. The proceeding is not punitive. The complaint is not made with a view to subjecting the respondents to any form of punishment. It is not remedial. The complaint is not filed with a view to affording compensation for any injury alleged to have resulted from the matter charged, nor with a view to protecting individuals from any such injury in the future. The proceeding is strictly a preventive measure taken in the interest of the general public. And what it is brought to prevent is not the commission of *acts* of unfair competition, but the pursuit of *unfair methods*. Furthermore, the order is not self-executory. Standing alone it is only informative and advisory. The Commission can not enforce it. If not acquiesced in by the respondents, the Commission may apply to the Circuit Court of Appeals to enforce it. But the Commission need not take such action; and it did not do so in respect to the order here in question. Respondents may, if they see fit, become the actors and ask to have the order set aside. That is what was done in the case at bar.

The proceeding is thus a novelty. It is a new device in administrative machinery, introduced by Congress in the year 1914, in the hope thereby of remedying condi-

[1] See Report Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess., No. 597, p. 13: "It is believed that the term 'unfair competition' has a legal significance which can be enforced by the Commission and the courts, and that it is no more difficult to determine what is unfair competition than it is to determine what is a reasonable rate or what is an unjust discrimination. The committee was of the opinion that it would be better to put in a general provision 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."

tions in business which a great majority of the American people regarded as menacing the general welfare, and which for more than a generation they had vainly attempted to remedy by the ordinary processes of law. It was believed that widespread and growing concentration in industry and commerce restrained trade, and that monopolies were acquiring increasing control of business. Legislation designed to arrest the movement and to secure disintegration of existing combinations had been enacted by some of the States as early as 1889. In 1890 Congress passed the Sherman law. It was followed by much legislation in the States [1] and many official investigations. Between 1906 and 1913 reports were made by the Federal Bureau of Corporations of its investigations into the petroleum industry, the tobacco industry, the steel industry, and the farm implement industry. A special committee of Congress investigated the affairs of the United States Steel Corporation. And in 1911 this court rendered its decision in Standard Oil Co. *v.* United States, 221 U. S. 1, and in American Tobacco Co. *v.* United States, 221 U. S. 106. The conviction became general in America, that the legislation of the past had been largely ineffective. There was general agreement that further legislation was desirable. But there was a clear division of opinion as to what its character should be. Many believed that concentration (called by its opponents monopoly) was inevitable and desirable; and these desired that concentration should be recognized by law and be regulated. Others believed that concentration was a source of evil; that existing combinations could be disintegrated, if only the judicial machinery were perfected; and that further concentration could be averted by providing additional remedies, and particularly through regulating competition. The latter view prevailed in the Sixty-third Congress.[2] The Clayton Act (Act Oct. 15, 1914, c. 323, 38 Stat. 730) was framed largely with a view to making more effective the remedies given by the Sherman law. The Federal Trade Commission Act (Act Sept. 26, 1914, c. 311, 38 Stat. 717) created an administrative tribunal, largely with a view to regulating competition.

[1] See Laws on Trusts and Monopolies, compiled under direction of the Clerk of the House Committee on the Judiciary, 63d Cong., by Nathan B. Williams, revised Jan. 10, 1914; also Trust Laws and Unfair Competition (Federal) Bureau of Corporations. Mar. 15, 1915.

[2] See Report of Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess., No. 597, p. 10, reporting the bill:

"Some would found such a commission upon the theory that monopolistic industry is the ultimate result of economic evolution and that it should be so recognized and declared to be vested with a public interest and as such regulated by a commission. This contemplates even the regulation of prices. Others hold that private monopoly is intolerable, unscientific, and abnormal, but recognize that a commission is a necessary adjunct to the preservation of competition and to the practical enforcement of the law. * * *

"The commission which is proposed by your committee in the Bill submitted is founded upon the latter purpose and idea."

Many of the duties imposed upon the Trade Commission had been theretofore performed by the Bureau of Corporations. That which was in essence new legislation was the power conferred by section 5. The belief was widespread that the great trusts had acquired their power, in the main, through destroying or overreaching their weaker rivals by resort to unfair practices.[1] As Standard Oil rebates led to the creation of the Interstate Commerce Commission,[2] other unfair methods of competition, which the investigations of the trusts had laid bare, led to the creation of the Federal Trade Commission. It was hoped that, as the former had substantially eliminated rebates, the latter might put an end to all other unfair trade practices, and that it might prove possible thereby to preserve the competitive system. It was a new experiment on old lines, and the machinery employed was substantially similar.

In undertaking to regulate competition through the Trade Commission, Congress (besides resorting to administrative as distinguished from judicial machinery) departed in two important respects from the methods and measures theretofore applied in dealing with trusts and restraints of trade:

(1) Instead of attempting to inflict punishment for having done prohibited acts, instead of enjoining the continuance of prohibited combinations and compelling disintegration of those formed in violation of law, the act undertook to preserve competition through supervisory action of the Commission. The potency of accomplished facts had already been demonstrated. The task of the Commission was to protect competitive business from *further* inroads by monopoly. It was to be ever vigilant. If it discovered that any business concern had used any practice which would be likely to result in public injury—because in its nature it would tend to aid or develop into a restraint of trade—the Commission was directed to intervene, before any act should be done or condition arise violative of the antitrust act. And it should do this by filing a complaint with a view to a thorough investigation; and, if need be, the issue of an order. Its action was to be prophylactic. Its purpose in respect to restraints of trade was prevention of diseased business conditions, not cure.[3]

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[1] See "Unfair Competition," by William S. Stevens, Political Science Quarterly (1914), p. 283; "The Morals of Monopoly and Competition" (1916), by H. B. Reed.

[2] See Railway Problems, by William Z. Ripley (1907), p. X.

[3] Senator Cummins, chairman of the committee which reported the bill, said (Cong. Rec., vol. 51, p. 11455):

"Unfair competition must usually proceed to great lengths and be destructive of competition before it can be seized and denounced by the antitrust law. In other cases it must be associated with, coupled with, other vicious and unlawful practices in order to bring the person or the corporation guilty of the practice within the scope of the antitrust law. The purpose of this bill in this section and in other sections which I hope will be added to it, is to seize the offender before his ravages have gone

(2) Instead of undertaking to define what practices should be deemed unfair, as had been done in earlier legislation, the act left the determination to the Commission.[1] Experience with existing laws had taught that definition, being necessarily rigid, would prove embarrassing and, if rigorously applied, might involve great hardship. Methods of competition which would be unfair in one industry, under certain circumstances, might, when adopted in another industry, or even in the same industry under different circumstances, be entirely unobjectionable.[2] Furthermore, an enumeration, however comprehensive, of existing methods of unfair competition must necessarily soon prove incomplete, as with new conditions constantly arising novel unfair methods would be devised and developed. In leaving to the Commission the determination of the question whether the method of competition pursued in a particular case was unfair, Congress followed the precedent which it had set a quarter of century earlier, when by the act to regulate commerce it conferred upon the Interstate Commerce Commission power to determine whether a preference or advantage given to a shipper or locality fell within the prohibition of an undue or unreasonable preference or advantage.[3] See Pennsylvania Co. *v.* United States, *supra*, 236 U. S. 361; Texas & Pacific Railway *v.* Interstate Commerce

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to the length necessary in order to bring him within the law that we already have.

"We knew little of these things in 1890. The commerce of the United States has largely developed in the last 25 years. The modern methods of carrying on business have been discovered and put into operation in the last quarter of a century; and as we have gone on under the antitrust law and under the decisions of the court in their effort to enforce that law, we have observed certain forms of industrial activity which ought to be prohibited whether in and of themselves they restrain trade or commerce or not. We have discovered that their tendency is evil; we have discovered that the end which is inevitably reached through these methods is an end which is destructive of fair commerce between the States. It is these considerations which, in my judgment, have made it wise if not necessary to supplement the antitrust law by additional legislation, not in antagonism to the antitrust law, but in harmony with the antitrust law, to more effectively put into the industrial life of America the principle of the antitrust law, which is fair, reasonable competition, independence to the individual, and disassociation among the corporations. * * *"

[1] See Report Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess., No. 597, p. 13: "The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid their continuance or whether it would, by a general declaration condemning unfair practices, leave it to the commission to determine what practices were unfair. It concluded that the latter course would be the better. * * *" See also "Unfair Competition," by W. H. S. Stevens (University of Chicago Press, 1916), pp. 1, 2. For laws prohibiting specific acts of unfair competition, see "Trust Laws and Unfair Competition," (Federal) Bureau of Corporations (Mar. 15, 1915), pp. 184, 199.

[2] Report of (Federal) Bureau of Corporations on the International Harvester Co., Mar. 3, 1913, p. 30: "In discussing the competitive methods of the company it should be recognized that some practices which might be regarded with indifference if there were a number of competitors of substantially equal size and power may become objectionable when one competitor far outranks not only its nearest rival, but practically all rivals combined, as is true of the International Harvester Co., so far as several of its most important lines are concerned."

The Australian Industries Preservation Act, 1908–1910, expressly declares that "unfair competition means competition which is unfair in the circumstances." "Trust Laws and Unfair Competition" (Federal) Bureau of Corporations (Mar. 15, 1915), pp. 552, 747.

[3] See note 1, *supra* [footnote on p. 572].

Commission, 162 U. S. 197, 219, 220. Recognizing that the question whether a method of competitive practice was unfair would ordinarily depend upon special facts, Congress imposed upon the Commission the duty of finding the facts; and it declared that findings of fact so made (if duly supported by evidence) were to be taken as final. The question whether the method of competition pursued could, on those facts, reasonably be held by the Commission to constitute an unfair method of competition, being a question of law, was necessarily left open to review by the court. Compare Interstate Commerce Commission *v.* Diffenbaugh, 222 U. S. 42; Interstate Commerce Commission *v.* Baltimore & Ohio R. R., 145 U. S. 263.

Third. Such a question of law is presented to us for decision; and it is this: Can the refusal by a manufacturer to sell his product to a jobber or retailer, except upon condition that the purchaser will buy from him also his trade requirements in another article or articles, reasonably be found by the Commission to be an unfair method of competition under the circumstances set forth in the findings of fact? If we were called upon to consider the sufficiency of the complaint, and that merely, the question for our decision would be, whether the particular practice could, under any circumstances, reasonably be deemed an unfair method of competition. But as this suit to set aside the order of the Commission brings before us its findings of fact, we must determine whether these are sufficient to support their conclusion of law that the practice constituted—

"Under the circumstances therein set forth, unfair methods of competition in interstate commerce against other manufacturers, dealers, and distributors in the material known as sugar-bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and second-hand bagging in violation of" the statute.

It is obvious that the imposition of such a condition is not necessarily and universally an unfair method; but that it may be such under some circumstances seems equally clear. Under the usual conditions of competitive trade the practice might be wholly unobjectionable. But the history of combinations has shown that what one may do with impunity, may have intolerable results when done by several in cooperation. Similarly what approximately equal individual traders may do in honorable rivalry may result in grave injustice and public injury, if done by a great corporation in a particular field of business which it is able to dominate. In other words, a method of competition fair among equals may be very unfair if applied where this is inequality of resources.[1] Without

[1] See "The Morals of Conopoly and Competition" by H. B. Reed (1916), pp. 120–122.

providing for those cases where the method of competition here involved would be unobjectionable, Massachusetts legislated against the practice, as early as 1901, by a statute (c. 478) of general application. Its highest court, in applying the law which it held to be constitutional, described the prohibited method as "unfair competition." Commonwealth *v.* Strauss, 188 Mass. 229; 191 Mass. 545. Compare People *v.* Duke, 44 N. Y. Suppl. 336. The (Federal) Bureau of Corporations held the practice, which it described as "full-line forcing," to be highly reprehensible.[1] Congress, by section 3 of the Clayton Act, specifically prohibited the practice in a limited field under certain circumstances. An injunction against the practice has been included in several decrees in favor of the Government entered in cases under the Sherman law.[2] In the decree by which the American Tobacco Co. was disintegrated pursuant to the mandate of this court, each of the 14 companies was enjoined from "refusing to sell to any jobber any brand of any tobacco product manufactured by it, except upon condition that such jobber shall purchase from the vendor some other brand or product also manufactured and sold by it. * * *" United States *v.* American Tobacco Co., 191 Fed. 371, 429. The practice here in question is merely one form of the so-called "tying clauses" or "conditional requirements" which have been declared in a discerning study of the whole subject to be "perhaps the most interesting of any of the methods of unfair competition."[3]

The following facts found by the Commission, and which the Circuit Court of Appeals held were supported by sufficient evidence, show that the conditions in the cotton-tie and bagging trade were in 1918 such that the Federal Trade Commission could reasonably find that the tying clause here in question was an unfair method of competition: Cotton, America's chief staple, is marketed in bales. To bale cotton, steel ties and jute bagging are essential. The Carnegie Steel Co., a subsidiary of the United States Steel Corporation, manufactures so large a proportion of all such steel ties that it dominates the cotton-tie situation in the United States and is able to fix and control the price of such ties throughout the country. The American Manufacturing Co. manufactures about 45 per cent of all bagging used for cotton baling; one other company about 20 per cent; and the remaining 35 per cent is made up of second-hand bagging and a material called sugar-bag cloth. Warren, Jones & Gratz, of St. Louis, are the Carnegie Co.'s sole agents

[1] Report of the (Federal) Bureau of Corporations on the International Harvester Co. (Mar. 3, 1913), p. 308.
[2] See "Unfair Methods of Competition and Their Prevention" by W. H. S. Stevens, Annals, American Academy of Political and Social Science (1916), pp. 42, 48. "Trust Laws and Unfair Competition," (Federal) Bureau of Corporations (Mar. 15, 1915), pp. 484–486, 493.
[3] "Unfair Competition," by W. H. S. Stevens (1916), p. 54.

for selling and distributing steel ties. They are also the American Manufacturing Co.'s sole agents for selling and distributing jute bagging in the cotton-growing section west of the Mississippi. By virtue of their selling agency for the Carnegie Co., Warren, Jones & Gratz held a dominating and controlling position in the sale and distribution of cotton ties in the entire cotton-growing section of the country, and thereby it was in a position to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Co. A great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firm than Warren, Jones & Gratz. In many instances Warren, Jones & Gratz refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging, and such purchasers were oftentimes compelled to buy from them bagging manufactured by the American Manufacturing Co. in order to procure a sufficient supply of steel ties.

These are conditions closely resembling those under which "full-line forcing," "exclusive-dealing requirements," or "shutting off materials, supplies, or machines from competitors,"—well-known methods of competition, have been held to be unfair, when practiced by concerns holding a preponderant position in the trade. [1]

Fourth. The Circuit Court of Appeals set aside the order of the Commission solely on the ground that it was without authority to determine the merits of specific individual grievances, and that the evidence did not support its finding that Warren, Jones & Gratz had—

"adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging."

The reason assigned by the Circuit Court of Appeals for so holding was that the evidence failed to show that the practice complained of (although acted on in individual cases by respondents) had become their "general practice." But the power of the Trade Commission to prohibit an unfair method of competition found to have been used is not limited to cases where the practice had become general. What section 5 declares unlawful is not unfair competition. That had been unlawful before. What that section made unlawful were "unfair methods of competition"; that is, the method or means by which an unfair end might be accomplished. The Commission was directed to act, if it had reason to believe that an "unfair method of competition in commerce has been

[1] See "Trust Laws and Unfair Competition" (Federal) Bureau of Corporations (Mar. 15, 1915), pp. 319–323, 328.

or is being used." The purpose of Congress was to prevent any unfair method which may have been used by any concern in competition from becoming its general practice. It was only by stopping its use before it became a general practice, that the apprehended effect of an unfair method in suppressing competition by destroying rivals could be averted. As the Circuit Court of Appeals found that the evidence was sufficient to support the facts set forth above, and since on those facts the Commission could reasonably hold that the method of competition in question was unfair under the circumstances, it had power under the act to issue the order complained of.

In my opinion the judgment of the circuit court of appeals should be reversed.

APPENDIX III.

RULES OF PRACTICE BEFORE THE COMMISSION.

[Adopted June 27, 1915. Amended as shown by footnotes.]

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. Three members of the Commission shall constitute a quorum for the transaction of business.

Quorum.

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, the Commission shall issue and serve upon the party complained of a complaint stating its charges

Issuance and service of complaint.

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.[1] Notice.

III. ANSWERS.

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. 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 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 answer must be filed.[2] Time allowed for answer. Form of answer. Size of paper, margin, etc.

IV. SERVICE.

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (*a*) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director, of the corporation or association to be served; or (*b*) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (*c*) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other Personal, or By leaving copy, or By registered mail. Return.

[1] The third paragraph of Rule II originally read as follows: "The Commission shall investigate the matters complained of in such application, and if upon investigation it shall appear to the Commission that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed at least 40 days after the service of said complaint." It was amended to its present form on Oct. 29, 1915.

[2] Resolution passed by the Commission Oct. 19, 1920, calls for the filing of three copies of the answer.

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.

Form of application.

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.

Permitted by order.

Size of paper, margin, etc., used on application.

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.

VI. CONTINUANCES AND EXTENSIONS OF TIME.

In discretion of Commission.

Continuances and extensions of time will be granted at the discretion of the Commission.

VII. WITNESSES AND SUBPŒNAS.

Examination ordinarily oral.

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.

Subpœnas for witnesses.

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 production of documentary evidence.

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.

Witness fees and mileage.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid

for like services in the courts of the United States. Witness fees shall be paid by the party at whose instance the witnesses appear.[1]

VIII. TIME FOR TAKING TESTIMONY.[2]

Exmination of witnesses to proceed as fast as practicable.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five nor more than ten days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a Commissioner, or an Examiner.

Notice to counsel.

IX. OBJECTIONS TO EVIDENCE.

To state grounds of objection, etc.

Objections to the evidence before the Commission, a Commissioner or an Examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

X. MOTIONS.

To briefly state nature of order applied for, etc.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

XI. HEARINGS ON INVESTIGATIONS.

By single commissioner.

When a matter for investigation is referred to a single Commissioner for examination or report, such Commissioner may conduct or hold conferences or hearings thereon, either alone or with other Commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

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.

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[1] This sentence added pursuant to resolution passed by the Commission Nov. 19, 1920.

[2] Rules VIII, IX, X, and XI were not a part of the original rules. They were adopted on Apr. 25, 1917. The rules now numbered XII, XIII, XIV, and XV were originally numbered VIII, IX, X, and XI.

XII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

Commission may order. The Commission may order testimony to be taken by deposition in a contested proceeding.

Before any person designated. Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Applications for depositions. Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

Testimony of witness. The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form 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.

And filed. Copy to defendant or his attorney. 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.

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.

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing. Limitations as to time.

XIII. DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed. Relevant and material matter only to be filed.

XIV. BRIEFS.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. 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[1] 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—

(1) A concise abstract or statement of the case. Form of brief.

(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 mar- Size of type, paper, etc.

[1] Fifteen copies originally called for. Amended to its present form July 29, 1920.

gins not less than 1 inch wide, and with double-leaded text and single-leaded citations.

Oral arguments.

Oral arguments will be had only as ordered by the Commission.

XV. ADDRESS OF THE COMMISSION.

Federal Trade Commission, Washington, D. C.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.

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