

# FEDERAL TRADE COMMISSION DECISIONS



FINDINGS AND ORDERS OF THE  
FEDERAL TRADE COMMISSION

JULY 1, 1920, TO JUNE 30, 1921

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PUBLISHED BY THE COMMISSION

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VOLUME III



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## PREFACE.

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This, the third volume of the Commission's decisions, covers the year July 1, 1920, to June 30, 1921, 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. The plan adopted in the preceding volume of publishing the text of the acts administered by the commission with annotations has been continued.

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, 1921.)

---

HUSTON THOMPSON, *Chairman.*

Took oath of office January 17, 1919, and September 26, 1919.\*

NELSON B. GASKILL, *Vice Chairman.*

Took oath of office January 31, 1920.

JOHN GARLAND POLLARD.

Took oath of office March 10, 1920.

VICTOR MURDOCK.

Took oath of office September 4, 1917, and October 4, 1918.\*

JOHN F. NUGENT.

Took oath of office January 15, 1921.

J. P. YODER, *Secretary.*

Took oath of office April 1, 1919.

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During the period July 1, 1920, to June 30, 1921, there also served as a commissioner—

WILLIAM B. COLVER.

Took oath of office March 21, 1917. Term expired September 25, 1920.

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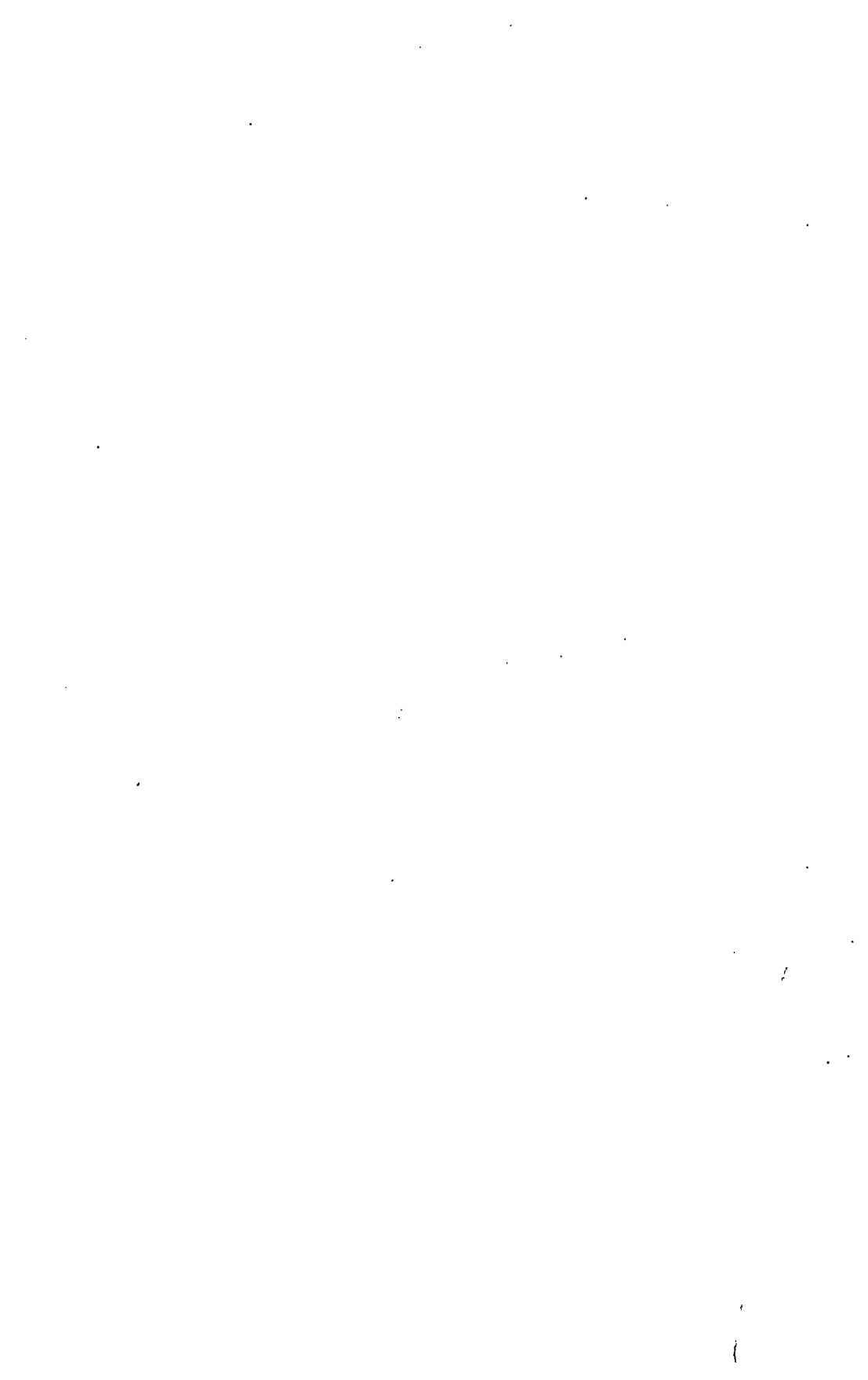
\* Second term.

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# FEDERAL TRADE COMMISSION

v.

## AMERICAN HOSIERY COMPANY.

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

Docket 413.—August 10, 1920.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of underwear, shirts, and other wearing apparel, branded, labeled, advertised, and sold certain lines of underwear and shirts, composed only partly of wool, as "Merino," "Super-cashmere," "Extra super-merino," and "Merino shirts," with a tendency thereby to mislead the public and injure competitors:

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

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the American 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, American 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 office and place of business in the city of New Britain, 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

## Findings.

3 F. T. C.

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 New Britain, 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 New Britain, 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 "Merino," "Super-cashmere," "Extra super-merino," "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.**

(Amended.)

The Federal Trade Commission having reason to believe that the above-named respondent, American 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 attorneys, 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

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## Findings.

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 American Hosiery Co., is a Connecticut corporation with its principal office and place of business located at the city of New Britain in said State, and has been for several years and is engaged in the manufacture and sale of underwear, shirts, and other wearing apparel through and among various States of the United States, and has conducted such business in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That the respondent, American Hosiery Co., in the conduct of its business as aforesaid, sells and distributes its product of underwear, shirts, etc., to purchasers thereof located in different States of the United States, and that there is and has been at all times herein mentioned a constant current of trade and commerce in said products between and among various States of the United States.

PAR. 3. That for more than a year last past the respondent, in the sale of its products in interstate commerce, as hereinbefore described, has labeled, advertised, and branded certain lines of underwear and shirts as "Merino," "Super-cashmere," "Extra super-merino," "Merino shirts."

PAR. 4. That the underwear and shirts referred to in paragraph 3 are not composed wholly of wool, part of the material in them being wool and part cotton, the proportion of wool varying from 20 to 80 per cent; that said brands and labels may indicate to the public that said underwear and shirts are composed wholly of wool and thereby the purchasing public may be led to believe that the said underwear and shirts so branded and labeled, as aforesaid, are composed wholly of wool.

PAR. 5. That there is no evidence that the respondent has acted with any malice or deliberate intent or purpose to mislead the public in using the brands and labels aforesaid.

PAR. 6. That the respondent, at different times covering a period of 16 years, and particularly in the years 1904, 1905, 1911, and 1912, has made known to the retail trade in underwear with whom it did business, through its publications in the form of descriptive price

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lists, that the articles put out by it for sale and labeled "Merino," "Super-cashmere," "Extra super-merino," and "Merino shirts" contained cotton as well as wool; and that in December, 1919, subsequent to the issuance of the complaint in this proceeding, respondent published the said facts as to the presence of cotton as well as wool in its products branded as aforesaid, through advertisements in the daily press in the cities of New York, Boston, Washington, Philadelphia, and Hartford, Conn.

PAR. 7. That the terms "Merino" and "Cashmere" as used and understood in the underwear trade have generally signified fabrics composed of a mixture of wool and cotton.

PAR. 8. That for the past 20 years it has been the general custom and practice among underwear manufacturers in the United States to label, brand, and advertise underwear of their manufacture as "Merino" and "Cashmere" when in fact such underwear so described is not composed wholly of wool, but contains an admixture of cotton; that large quantities of underwear have been imported into the United States from foreign countries and come into direct competition with the underwear manufactured in the United States; that a part of the underwear so imported into the United States has been and is now labeled, branded, and advertised as "Merino" underwear in accordance with the general custom and practice in the underwear trade in the United States, although the said underwear is not composed wholly of wool, but, on the contrary, is composed of cotton and wool in varying percentages.

PAR. 9. That the tendency of said labels to mislead the public entails interference with fair competition.

#### 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, American Hosiery Co., having entered its appearance by Gross, Gross & Hyde, 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

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evidence in this case and in lieu of testimony and proceed forthwith on 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, American Hosiery Co., its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly employing or using the labels and brands "Merino," "Super-cashmere," "Extra super-merino," and "Merino shirts" or any compound thereof, or any similar descriptive brands or labels on underwear, socks, or other knit goods except either (1) when the knitted fabric is made entirely of wool yarns of a kind specified, or (2) when the term descriptive of the wool stock is joined with the name of other staple or staples contained in the knitted fabric, e. g., merino wool and cotton; supercashmere wool and cotton; extra supermerino wool and cotton; merino shirts, wool and cotton.

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 GREAT REPUBLIC TIRE &amp; RUBBER MANUFACTURING CO.

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

Docket 492.—August 10, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of automobile tires and inner tubes as the "Republic Rubber Company," sold and advertised the same under the brand name "Republic," so that they became widely and favorably known as such and it acquired a valuable good will in the tires and tubes and in the brand name; and thereafter a competitor

- (a) Adopted the name "The Great Republic Tire and Rubber Manufacturing Company";
- (b) Used the same (1) in its stock subscription blanks, certificates, pamphlets, prospectuses, letters, etc., and (2) on its tires, inner tubes, and other products;
- (c) Extensively so advertised the same; and
- (d) Branded its tires, inner tubes, and other products as "Great Republic," using said brand name in addition to its corporate name, on all its products and in its business generally;

Thereby deceiving and misleading the purchasing public to a substantial extent and causing it embarrassment and confusion respecting the identity of the two concerns and of their respective products:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Great Republic Tire & Rubber 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 Great Republic Tire & Rubber Manufacturing Co., is now and at all times hereinafter mentioned was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city of Muskogee, State of Oklahoma, and is now and for more than two years last past has been engaged in the sale of automobile tires and inner tubes, and in the transportation of the same from their place of manufacture to purchasers thereof in other States of the United States, in competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the Republic Rubber Co. is now and ever since the year 1901 has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and for more than 10 years last past has been engaged in the manufacture and sale of automobile tires and inner tubes which are manufactured by it in the city of Youngstown, Ohio, and are sold through dealers, distributors, and agents extensively throughout the United States under the brand name "Republic"; that the said the Republic Rubber Co. has at all said times extensively advertised its said automobile tires and inner tubes so that they have become widely and favorably known by the said brand name, and that a valuable good will has been created throughout the United States for the automobile tires and inner tubes of the Republic Rubber Co. and for the brand name "Republic" under which they are sold as aforesaid.

PAR. 3. That the respondent, well knowing that the automobile tires and inner tubes manufactured by the Republic Rubber Co. had been for years extensively advertised throughout the United States under the brand name "Republic," and well knowing that said brand name and the automobile tires and inner tubes to which it was applied had acquired a wide reputation for good quality throughout the United States, at the time of its incorporation in 1919 adopted, and ever since has continued to use, as its corporate title, "The Great Republic Tire & Rubber Manufacturing Company," and has adopted and used as a brand name on automobile tires and inner tubes sold by it the words "Great Republic," which corporate title and brand name so closely resemble and simulate the aforesaid corporate title and brand name of the Republic Rubber Co. as to deceive and mislead the purchasing public and cause them to believe that the respondent and the Republic Rubber Co. are one and the same, and that the automobile tires and inner tubes advertised for sale by the respondent under its aforesaid brand name were and are the products of the Republic Rubber Co., with the effect of securing for the respondent the benefits and advantages of the extensive adver-



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tising previously done by the Republic Rubber Co. and the good will attaching to the brand name, "Republic," and with the further effect among others of embarrassing and hindering the Republic Rubber Co. in the operation of its business.

PAR. 4. That the respondent, for more than two years last past, in the conduct of its business of selling automobile tires and inner tubes in interstate commerce, as aforesaid, by means of advertising and by statements embossed and printed upon its said automobile tires and inner tubes and by various other means, has represented to the purchasing public that the respondent was a manufacturer of automobile tires and inner tubes, when in fact the respondent was not a manufacturer of automobile tires and inner tubes, but had caused the said automobile tires and inner tubes to be manufactured for it by other manufacturers from whom respondent obtained said automobile tires and inner tubes and sold them in interstate commerce as aforesaid; and that the effect thereof, in addition to identifying the respondent with the Republic Rubber Co., as hereinbefore set forth, was to induce the public to give to the respondent such preference as might be given by them to manufacturers over dealers in the purchase of the products of the respondent or in investing in its corporate stock.

**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 Great Republic Tire & Rubber 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 respect of such alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by E. C. Marianelli, its attorney, and having fully filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken as the facts for this proceeding by the Commission and in lieu of testimony herein and that the Commission should forthwith proceed upon such agreed statement of facts 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 parties having waived any and all rights they may have to require the introduction of such testimony or to file briefs or make oral argument in the above-entitled matter, 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, The Great Republic Tire & Rubber Manufacturing Co., is now and for more than a year last past has been 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 Muskogee, State of Oklahoma, and is now and for more than one year last past, has been engaged in the sale of automobile tires and inner tubes, and in the transportation of the same from their place of manufacture to purchasers thereof in other States of the United States, in competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the Republic Rubber Co. is now, and has continuously been since the year 1901, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and for more than 10 years last past has been engaged in the manufacture and sale of automobile tires and inner tubes, which are manufactured by it in the city of Youngstown, Ohio, and have been and are sold through dealers, distributors, and agents extensively throughout the United States under the brand name "Republic." That the said Republic Rubber Co. has, during the said 10 years last past, extensively advertised said automobile tires and inner tubes so that they have become, and now are, widely and favorably known by the said brand name "Republic," and that a valuable good will has been created through the United States for the automobile tires and inner tubes of the Republic Rubber Co. and for the brand name "Republic," under which they have been and are sold as aforesaid, and which brand name has come to signify and mean, and does now signify and mean, in the mind of the public that the article upon which it appears is the product of the Republic Rubber Co., of Youngstown, Ohio, and possesses the quality and is capable of the services attributed to the products of said Republic Rubber Co., and associated therewith by the public.

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PAR. 3. That the respondent in the year 1919 adopted and began to use and ever since has continued to use as its corporate title, "The Great Republic Tire & Rubber Manufacturing Company," employing said name and using it on, upon, and in connection with any and all pamphlets, prospectuses, letters, bills, stationery, and literature of any kind published, circulated, and distributed or used by respondent in the conduct of its business, in the course of interstate commerce and otherwise, including its certificates of stock and contracts for sale thereof used by its agents and salesmen in various parts of the country, and has extensively advertised its business and its products in and through various States of the United States under and by said name, "The Great Republic Tire & Rubber Manufacturing Company," and has adopted and used as a brand name on automobile tires and inner tubes produced or sold by it, the words "Great Republic," and in addition to the use of said brand words, "Great Republic" on said tires and other products, it has adopted the practice of placing thereon its said corporate name and title, to wit: "The Great Republic Tire & Rubber Manufacturing Company," using said corporate name and designation as well as said brand name, "Great Republic," in connection with each and all of its products, and in all kinds of business transacted by it in the course of interstate commerce or otherwise, which corporate title and brand name closely resemble the aforesaid corporate title and brand name of the Republic Rubber Co., and the effect of such close resemblance between said corporate names, as well as between said brand names, has been to mislead the purchasing public to a substantial extent and cause them to believe that the respondent and the Republic Rubber Co. are one and the same, and that the automobile tires and inner tubes advertised for sale by the respondent under its aforesaid brand name were and are the products of the Republic Rubber Co., and with the further effect of producing embarrassment and confusion among the purchasing public, and in the conduct of the business of respondent and of the Republic Rubber Co., of Youngstown, Ohio, respectively; and that the natural and probable effect of such close similarity between the corporate names and brand names of respondent and the Republic Rubber Co. of Ohio has been and must continue to be deceptive and misleading so long as such method of competition is practiced by respondent.

## CONCLUSIONS.

That the methods of competition set forth in the foregoing findings are, and each of them is, under the circumstances therein set forth, unfair methods of competition in interstate commerce in viola-

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tion 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 is alleged that it had reason to believe that the above-named respondent, The Great Republic Tire & Rubber 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 respect of such alleged violation would be to the interest of the public, and fully stating its charges, and the respondent having duly entered its appearance by E. C. Marianelli, its attorney, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and said attorney having signed and filed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such agreed statement of facts to enter its report and findings as to the facts and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and which said report is hereby referred to and made part hereof: Now, therefore,

*It is ordered,* That respondent, The Great Republic Tire & Rubber Manufacturing Co., and its officers, directors, agents, servants, and employees cease and desist from using or applying directly or indirectly the brand name "Great Republic" or any word or words, group of words, phrase or phrases, in which the word "Republic" appears, or any name, character or sign, indicative or suggestive thereof, in, on, upon, or in connection with its tires, tubes, or other products or articles of merchandise sold, or offered for sale, by it, or through or by any of its officers, agents, or employees, or in, on, upon, or in connection with its stationery, prospectuses, pamphlets, advertisements, certificates of stock, contracts of sale, or literature of any kind or nature, and from applying thereto, or thereon, or using in connection therewith, directly or indirectly, the corporate name of

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respondent, "The Great Republic Tire & Rubber Manufacturing Company," except in connection with the words " of Muskogee, Oklahoma," and unless there is substituted in the place and stead of the brand name "Great Republic," heretofore used by respondent, another brand or trade name, equally as conspicuous and in nowise similar thereto or calculated or likely to mislead or cause the public to believe that the automobile tires, inner tubes, or other products or articles sold or offered for sale by the respondent are the automobile tires, inner tubes, or products or articles sold or offered for sale by the Republic Rubber Co. of Ohio.

*It is further ordered,* That the respondent make and file with the Federal Trade Commission not later than the 15th day of October, 1920, a report in detail of the manner and form in which it has complied with this order.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

H. NORWOOD EWING, DOING BUSINESS UNDER THE  
FIRM NAME AND STYLE OF LIBERTY PAPER CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 350.—September 8, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of a gum paper known as "sealing tape" expended annually a substantial sum of money in advertising, and thereafter an individual engaged as a "converter" in the sale of toilet paper and paper bags,

- (a) Adopted the same name as the corporation, with resulting confusion in mails and remittances;
- (b) Advertised and represented himself as a manufacturer of toilet paper and paper bags, the facts being that (1) he owned no mill making toilet paper, (2) his interest in such mill had been very limited both in time and amount, and (3) his interest in, and representation as sales agent of, a paper-bag factory had been likewise limited; and
- (c) Advertised and represented the prices quoted by him as being f. o. b. warehouses in three cities named, in two of which he had no warehouses;

Intending by so advertising and holding himself out as a manufacturer to mislead the public into believing that by purchasing from him it would eliminate the middleman's profit:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that H. Norwood Ewing hereinafter referred to as respondent, doing business under the firm name and style of Liberty Paper 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 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, H. Norwood Ewing, is now, and for more than one year last past has been, engaged in the business of purchasing paper in bulk in the various States and Territories

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of the United States, whence the same is and has been transported to the place of business of the respondent in the city of New York, where said paper purchased in bulk by respondent is converted by him into paper bags, toilet paper, and similar paper-products and then sold and distributed by the respondent generally in commerce through and among the 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 since January 10, 1919, and for many years prior thereto a corporation of the State of Massachusetts, whose title was and is Liberty Paper Co., had a branch office in the city of New York aforesaid, and had and still has an established business in the State of New York and adjoining States in the manufacture and sale in commerce of various paper products, which it, the said Liberty Paper Co., manufactures, and such company and its products have been for many years and are now well known in the paper trade, particularly in the city of New York aforesaid.

PAR. 3. That since the month of January, 1919, the respondent, H. Norwood Ewing, has been conducting his business of purchasing paper in bulk, converting the same into paper bags, toilet paper, and other paper products, and then selling such paper bags, toilet paper, and other paper products in commerce under the firm name and style of Liberty Paper Co., with the effect of misleading the public and inducing the public to believe that the business which respondent was conducting was the business of the Liberty Paper Co., the corporation aforesaid, and with the further effect of causing embarrassment and confusion in the conduct of the business of the Liberty Paper Co., the said corporation, and with the further effect, among others, of securing to the respondent the benefit of the advertising of the said corporation, Liberty Paper Co., and the benefit of its good reputation in the trade.

PAR. 4. That respondent, since the month of January, 1919, has represented to the public and to the paper-buying trade by means of advertising and by various other means that the Liberty Paper Co., the trade name which as hereinafter mentioned he has used since the month of January, 1919, is a manufacturer of paper, when in fact said respondent is not a manufacturer of paper, but, on the other hand, a purchaser of paper in bulk, which is converted by respondent into the finished product and then sold and shipped in competition with other persons, firms, copartnerships, and corporations, similarly engaged, to various purchasers thereof throughout the States and Territories of the United States, and the District of

Columbia; that the effect thereof was and is to induce purchasers of paper products into the belief that the respondent is a manufacturer of such paper products, and thereby secure to respondent a preference over jobbers similarly engaged as respondent in the converting of bulk paper into paper products.

### 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, H. Norwood Ewing, doing business under the firm name and style of Liberty Paper Co., had 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 has been and is engaged in the business of purchasing paper in bulk in the various States and Territories of the United States and transporting it to his place of business in the city of New York, where he converts it into paper bags and toilet paper and similar paper products, and distributes the same generally in commerce through and among the several States and Territories of the United States in competition with other persons and corporations similarly engaged; and that he has been and is conducting such business under the name and title of Liberty Paper Co.; and that there is a Massachusetts corporation of the same name with an office and an established business in the city of New York, which company and its products have been for many years well known in the paper trade, particularly in the city of New York; and that respondent by the adoption of the name "Liberty Paper Company" misled the public, and induced it to believe that the business of respondent was the business of said Massachusetts corporation; and that said respondent has represented to the public and the paper-buying trade, by means of advertisements and other means, that the Liberty Paper Co., the trade name of respondent, is a paper manufacturer when in truth and in fact said respondent is not a manufacturer of paper but a purchaser of paper in bulk, which is converted by respondent into the finished product, and then sold and shipped in competition with other persons and corporations similarly engaged to purchasers throughout the States and Territories of the United States; and that a proceeding by it in respect to the allegations herein set forth would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered his appearance by Joseph S. Cohen, his at-



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torney, and a hearing having been had upon the allegations of the complaint and testimony taken, the Commission makes this report and findings as to the facts in this proceeding.

## FINDINGS AS TO FACTS.

PARAGRAPH 1. The respondent at the times mentioned in the complaint was engaged in business under the name and style of Liberty Paper Co., under which name he purchased toilet paper and paper bags of manufacturers and resold the same to wholesale dealers and shipped the same into several States and Territories of the United States and the District of Columbia; that respondent in the conduct of his business maintained an office in the city of New York and also in the city of Chicago; that the Liberty Paper Co., as used by respondent, was not incorporated.

PAR. 2. The respondent carried on such business in direct competition with many other persons and corporations similarly engaged in interstate commerce.

PAR. 3. During the time respondent was so conducting his business under the name of the Liberty Paper Co. there was and still is a Massachusetts corporation of that name maintaining its principal office at 52 Vanderbilt Avenue, New York City, which company was incorporated in 1910 and owns and operates a factory at Bellows Falls, Vt. The business of the Massachusetts corporation is the manufacture of a variety of gum paper known as sealing tape. It does not manufacture paper but does manufacture tapes. It expends about \$30,000 annually in advertising, using such methods as Saturday Evening Post, Literary Digest, System, Printer's Ink, and trade journals.

PAR. 4. Said Massachusetts corporation received a great many letters and checks intended for respondent, but has never secured any business intended for respondent, and it is not known that respondent obtained any business intended for said Massachusetts corporation.

PAR. 5. The respondent's main office is in the Woolworth Building, in the city of New York. He holds himself out to the public as a manufacturer of paper bags and toilet papers. In his circular letters sent to the trade throughout the several States of the United States, of which Exhibits 1, 2, and 5 are samples, he holds himself out to the trade as a manufacturer of toilet paper and paper towels. Exhibits 1, 2, and 5 were sent to wholesale paper dealers in every State of the United States. The printed heading of each contains the statement that respondent is a manufacturer of toilet paper and paper towels or displays the word "manufacturers" in connec-

tion with the words "paper bags" and "toilet paper." Under the word "mills," on the margin of Exhibits 1, 2, 3, and 4, are the words "New York," "Pennsylvania," and "Wisconsin." On exhibit 2 "Massachusetts" is added.

PAR. 6. Respondent does not now own and never has owned any mills in any of the States named in said circular letters, nor in any other State, which manufactures toilet paper, and respondent does not now own and never has owned any interest in any mill manufacturing toilet paper, except that from the early part of 1919 until the fall of that year respondent owned two shares of the capital stock of the Daniels Manufacturing Co., of Rhinelander, Wis., of the par value of \$100 each, which company had two machines for converting paper rolls into toilet paper.

PAR. 7. In August, 1918, respondent, with others, organized the Victory Bag & Paper Co., of Marinette, Wis., and became the owner of one-third of the authorized capital stock of that company of the par value of \$17,500, which he held until August, 1919. The Victory Bag & Paper Co. did not manufacture any paper bags to any extent until December, 1918. In August, 1919, respondent disposed of his stock in the Victory Bag & Paper Co. and has had no financial interest in that company since that time.

PAR. 8. During the years 1917 and 1918 respondent purchased practically all of the products handled by him from paper mills in which he had no financial interest, which product was sold by him to the trade throughout the United States and shipped either direct from the manufacturer to the purchaser or from divers places where it was stored in public warehouses.

PAR. 9. Respondent represented to the trade that the prices quoted by him were "f. o. b. our warehouse, Springfield, Mass., Atlanta, Ga., and Chicago, Ill." Respondent neither owns nor maintains a warehouse at Springfield, Mass., or at Atlanta, Ga., but did own one at Chicago, Ill. The warehouses referred to in Springfield, Mass., and Atlanta, Ga., are public warehouses in which respondent stored stocks of paper bags and toilet paper purchased from manufacturers.

PAR. 10. In the year 1919 respondent purchased about six-elevenths of all paper bags sold by him from mills other than that of the Victory Bag & Paper Co., in which he was a stockholder prior to August 1, 1919.

PAR. 11. During the time respondent was a stockholder in the Victory Bag & Paper Co. he handled about one-third of its output, disposing of the same in the States of Illinois, Wisconsin, Indiana, Missouri, and Iowa as sales agent. He also had the privilege of selling in St. Paul and Minneapolis. During the time respondent acted as

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sales agent for the Victory Bag & Paper Co. the president of that company had an interest in the agency to the extent of 25 per cent of its profits.

PAR. 12. Respondent does not now and never has represented any mill manufacturing toilet paper, and does not now and never has manufactured toilet paper, and has never had any interest in any mill manufacturing toilet paper except that during a part of the year 1919 he owned two shares of capital stock in the Daniels Manufacturing Co., of Rhinelander, Wis., of the par value of \$100 each.

PAR. 13. The product handled by respondent was labeled and branded with various brands and labels, which labels were manufactured for him and furnished by him to the mills from which he purchased the paper products to be attached to such products. He was not selling agent for any mills of either the States of Pennsylvania or New York.

PAR. 14. About one-fourth of the toilet paper handled by respondent was made from so-called Jumbo rolls, purchased by him and delivered to mills to be converted into toilet paper; the remaining three-fourths was purchased direct from the mills and branded with respondent's brands and marked with his labels.

PAR. 15. A converter in the paper trade is one who purchases "Jumbo rolls" of the manufacturer and converts it into commercial articles. A manufacturer is one who makes paper from raw material or who makes pulp and makes paper from the pulp.

PAR. 16. In so advertising and holding itself out to the public as a manufacturer of paper bags and toilet paper, the respondent intended to mislead the public into believing that by purchasing such products from him it was eliminating the profit of the middle man.

#### CONCLUSIONS.

The methods of competition set forth in the foregoing findings of facts and each and all of them are, under the circumstances therein set forth, 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."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent, H. Norwood Ewing, doing business under the firm name and style of Liberty Paper Co., having entered

its appearance by Joseph G. Cohen, his attorney, and the said respondent by his attorney having served and filed his answer to said complaint, and testimony having been taken in support of said complaint and on behalf of said respondent in support of said answer, and the Commission having made its findings as to the facts and its conclusions in this proceeding, and on the date hereof having made and filed a 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: Therefore,

*It is hereby ordered,* That the respondent, H. Norwood Ewing, his agents, servants, and employees, desist from:

(1) Transacting business under the name and style of Liberty Paper Co., and from using the name Liberty Paper Co. as a trade name.

(2) From holding himself out or advertising himself as a manufacturer of paper bags, toilet paper, and paper towels, or any or either of said paper products or as a manufacturer of any paper product.

(3) From advertising to the trade and the public that he owns or controls any mill or mills for the manufacture of paper bags, toilet paper, paper towels, or other paper products in the States of New York, Pennsylvania, and Wisconsin, or elsewhere.

(4) That within 60 days from the date of the service of this order upon you, you report to the Commission how and in what manner you have complied with the terms of this order.

Complaint.

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## FEDERAL TRADE COMMISSION

*v.*

## SPARROWS POINT STORE COMPANY.

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

Docket 506.—September 8, 1920.

## SYLLABUS.

Where a corporation engaged in the sale of ship supplies, gave to officers of vessels who inspected and approved supplies sold and delivered by it to their vessels, gratuities such as cigars, meals, and entertainment, and sums of money, for the purpose of retaining their good will and of securing their future patronage, and as an inducement for them to influence their employers to purchase or contract to purchase supplies from it:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from the preliminary investigation made by it that the Sparrows Point Store 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 and foreign 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 Sparrows Point Store Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Maryland, having its principal office and place of business at Sparrows Point, and its ship chandlery store at Baltimore, State of Maryland, and is now and for more than one year last past has been engaged in selling groceries, meats, dry goods, clothing, boots and shoes, drugs, coal and wood, deck and engine supplies for ships, in interstate and foreign commerce, 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 selling like products.

PAR. 2. That in the course of its business of selling groceries, meats, dry goods, clothing, boots and shoes, drugs, coal and wood, deck and engine supplies for ships, in interstate and foreign commerce, the respondent for more than one year last past has been giving and offering to give to employees, such as captains, chief engineers, and stewards of ships, 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, groceries, meats, dry goods, clothing, boots and shoes, drugs, coal and wood, deck and engine supplies for ships, without other consideration therefor, gratuities such as liquor, cigars, meals, and entertainment.

PAR. 3. That in the course of its business of selling groceries, meats, dry goods, clothing, boots and shoes, drugs, coal and wood, deck and engine supplies for ships, in interstate and foreign commerce, the respondent for more than one year last past has been giving and offering to give to employees, such as captains, chief engineers, and stewards of ships, of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent groceries, meats, dry goods, clothing, boots and shoes, drugs, coal and wood, deck and engine supplies for ships, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent; that within the year last past the respondent gave large sums of money to employees of the following ships:

Ships operated for the United States Shipping Board Emergency Fleet Corporation—*Aberdeen, Allentown, Alamosa, Anacortes, Eastern Star, Crabtree, Cottonplant, Gunston Hall, Hwah Jah, Lake Glencoe, Mattapan, Opelike, and Walden;*

Private-owned ships—*Caledonia, Clan Morrison, Eigen Hulp II, Gaelic Prince, Glastonburg, Hartland Point, Kelbergen, Serpentine, Sidlow Range, Southerndown, Thurland Castle, Tudor Prince, and War Sword.*

#### 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 Sparrows Point Store Co., has been and now is using unfair methods of competition in interstate and foreign commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act

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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 Preston & Field, its attorneys, and having filed its answer admitting certain of the matters and things therein as alleged and denying certain others thereof, 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 and having waived the presentation of oral argument on the same, the Commission, having duly considered the record and being fully advised in the premises, now makes 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, the Sparrows Point Store Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, having its home office located at the city of Baltimore, in said State, and is now and for more than one year last past has been engaged in selling supplies and stores for ships in interstate and foreign commerce, in competition with other persons, firms, copartnerships, and corporations selling like products.

PAR. 2. That in the course of said business the respondent purchases and enters into contracts for the purchase of supplies and stores for ships in the different States of the United States, transporting the same through other States of the United States to the city of Baltimore, where they are sold and offered for sale to purchasers thereof; that after such supplies and stores are sold they are delivered to the purchasers thereof in said city of Baltimore for use and consumption by their ships upon the high seas in and beyond the territorial waters of the United States.

PAR. 3. That in the course of its business of selling supplies and stores for ships in interstate and foreign commerce as aforesaid, the respondent sells and furnishes supplies and stores principally to domestic and foreign-owned ships calling at the port of Baltimore, contracts for which in many instances having been negotiated

and entered into with the owners of said ships in advance, both in this country and in foreign countries; that on the arrival of such ships at the port of Baltimore a representative of the respondent visits the ships and solicits from the captain or other officer an order for supplies and stores.

PAR. 4. That in the course of its business of selling supplies and stores for ships in interstate and foreign commerce as aforesaid, and after contracts for such supplies have been made and executed by duly authorized agents of said ships, and the officer or officers of said ships have selected and ordered supplies and the supplies have been delivered and inspected by said officer and he has given his approval of the respondent's invoice of the same, it has been the practice of the respondent for more than one year last past to give such officers, before the ship departs for other ports in this or foreign countries with the supplies so purchased from the respondent, gratuities such as cigars, meals, and entertainment, also sums of money, for the purpose of retaining the officers' good will, and to secure their future patronage, and as an inducement to influence their employers to purchase or contract to purchase from the respondent supplies and stores for their ships.

PAR. 5. That in the course of its business of selling supplies for ships in interstate and foreign commerce as aforesaid and after contracts have been made with duly authorized agents of such ships, and the officer or officers of the ship have selected and ordered supplies, and the supplies have been delivered and inspected by said officer and he has given his approval of the respondent's invoice of the same, respondent has given sums of money to officers of the following ships for the purpose of retaining their good will and to secure their future patronage, and as an inducement to influence their employers to purchase or contract to purchase from the respondent supplies and stores for said ships: *Aberdeen, Allentown, Alamosa, Anacortes, Eastern Star, Crabtree, Cottonplant, Gunston Hall, Hwah Jah, Lake Glencoe, Mattapan, Opelike, Walden, Caledonia, Clan Morrison, Eigon Hulp II, Gaelic Prince, Glastonburg, Hartland Point, Kelbergen, Serpentine, Sidlow Range, Southerndown, Thurland Castle, Tudor Prince, and War Sword.*

#### CONCLUSION.

That the methods of competition set forth in the foregoing findings as to facts, in paragraphs 1, 2, 3, 4, and 5, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate and foreign commerce in violation of the provisions of section 5 of the act of Congress approved September



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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 Sparrows Point Store Co., having entered its appearance by Preston & Field, its attorneys, 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 therein 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 it may have 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 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 Sparrows Point Store Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly giving or offering to give gratuities such as cigars, meals, entertainment, and sums of money to captains, chief engineers, stewards, and other employees of ships of its customers or prospective customers for the purpose of retaining their good will or to secure their future patronage or as an inducement to influence their employers to purchase or contract to purchase from the respondent supplies and stores for their ships.

*It is further ordered,* That the respondent make and file with the Commission not later than the 31st day of December, A. D. 1920, a report in detail of the manner and form in which this order has been conformed to.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## SHOTWELL MANUFACTURING COMPANY.

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

Docket 562.—September 8, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of candy and kindred products gave and offered to give to salesmen of merchants and jobbers handling its products and those of its competitors, with the knowledge of said jobbers but without the knowledge, so far as said corporation was advised, of the retailers and customers who purchased its products from said jobbers, valuable premiums and presents consisting of watches, jewelry, and other personal property, as an inducement for them to push the sale of its goods in preference to similar products of its competitors:

*Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Shotwell 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 Shotwell Manufacturing 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 Illinois, having its principal factory, office, and place of business located in the city of Chicago in said State, now and for more than two years last past engaged in the manufacture and sale of candy and kindred products among the several States of the United States, the Territories thereof, and the District of

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

PAR. 2. That the respondent, the Shotwell Manufacturing Co., in the conduct of its business manufactures such candy and kindred products so sold by it at one of its factories located in the city of Chicago, State of Illinois, and in another of its factories located in the town of Arthur, State of Iowa, 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 the said city of Chicago and in and to the said town of Arthur, where they are made into the finished product and sold and shipped to purchasers thereof; that after such candy and kindred products are so manufactured they are continuously moved to, from, and among the 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 in commerce in the said candy and kindred products between and among 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 to and through the town of Arthur, State of Iowa, and therefrom to and through other States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent now and for more than two years last past with the effect of stifling and suppressing competition in the manufacture and sale of candy and kindred products in interstate commerce has given and offered to give valuable premiums and presents consisting of watches, valuable jewelry, and other valuable personal property to the salesmen of merchants and jobbers handling the products of the respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sales of respondent's products to the exclusion of similar products of its competitors.

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

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

The respondent having entered its appearance by its attorney, filed its answer herein, and the attorneys for the Federal Trade Commission and the respondent having duly signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that such statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might therewith proceed upon such agreed statement of facts to make its report and findings as to the facts, its conclusions of law, and its order disposing of this proceeding without any further notice to respondent.

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 conclusion.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Shotwell Manufacturing 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 Illinois, having its principal factory, office, and place of business located in the city of Chicago, in said State, now and for more than two years last past engaged in the manufacture and sale of candy and kindred products among the several States of the United States, Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Shotwell Manufacturing Co., in the conduct of its business manufactures such candy and kindred products so sold by it at one of its factories located in the city of Chicago, State of Illinois, and in another of its factories located in the town of Arthur, State of Iowa, 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 the city of Chicago and in and to the said town of Arthur, where they are made into the finished products and sold and shipped to purchasers thereof; that after such candy and kindred 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 in commerce in the said candy and kindred products between and among 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 to and through

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the town of Arthur, State of Iowa, and therefrom to and through other States of the United States, Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Shotwell Manufacturing Co., now and for more than two years last past has given and offered to give valuable premiums and presents consisting of watches, valuable jewelry, and other valuable personal property to the salesmen of merchants and jobbers handling the products of respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sales of respondent's products in preference over similar products of its competitors.

PAR. 4. That the respondent, in order to carry out its said plan of inducing such salesmen of jobbers and other dealers to push the sale of its products, issued a catalogue, which is annexed to the agreed statement of facts and marked "Exhibit A,"<sup>1</sup> which said catalogue is labeled "Incentives to success, new and enlarged edition; our method of showing appreciation to jobbers' salesmen for their efforts in our behalf," which said catalogue sets out in detail a list of premiums offered to such salesmen of such jobbers, stating therein the scheme and plan of such respondent in furthering, by the offering of such premiums, the sales of its product to the exclusion of the sales of the products of competitors of the respondent company, which said catalogue is made a part of this findings of facts.

PAR. 5. That the quantity of such products so manufactured, sold, and distributed by respondent is substantial and forms an important item of commerce among the several States of the United States, and the aforesaid acts were committed with the intention and purpose of restricting and hampering the marketing of the products so manufactured and sold by respondent's competitors.

PAR. 6. That the respondent did not give any notice to the retail merchants or the customers who purchased its products from jobbers to the effect that the respondent was offering and giving premiums to the salesmen of jobbers to push the sale of respondent's products in preference to the sales of other persons, firms, or corporations competing with respondent, and that, so far as respondent knows or is informed, such retail merchants and other customers who purchased respondent's products from jobbers did not know that the salesmen of such jobbers had received premiums or other rewards for pushing the sale of respondent's products.

PAR. 7. That respondent informed jobbers who were handling the products of respondent of the fact that respondent was offering and

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<sup>1</sup> Not printed.

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giving to the salesmen of such jobbers premiums, as set out in the exhibit attached to the original agreed statement of facts, to further and push the products of respondent in preference to the products of other competing manufacturers of respondent.

## CONCLUSION.

The practices of said respondent under the methods and circumstances described in the foregoing findings are unfair methods of competition in interstate commerce, and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein wherein it alleges that it had reason to believe that the respondent, Shotwell Manufacturing Co., 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," and that a proceeding therein in respect to the alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having duly entered its appearance and having filed its answer, and the attorneys for the above parties having filed and signed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might proceed on said statement of facts to enter its report, findings of the facts, its conclusions of law, and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusion that respondent 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: Now, therefore,

*It is ordered,* That the respondent, Shotwell Manufacturing Co., a corporation existing under and by virtue of the laws of the State of Illinois, and having its principal factory, office, and place of business located in the city of Chicago, said State, its officers, directors, agents, servants, and employees cease and desist:

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(1) From directly or indirectly offering to give or giving valuable premiums or presents or other valuable personal property or any other thing of value to the salesmen of merchants or jobbers handling the products of the respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sale of respondent's products to the exclusion of similar products of its competitors.

(2) From publishing or circulating any catalogues, circulars, letters, advertisements, or other printed matter containing lists of premiums, presents, or other things of value to be given to the salesmen of merchants or jobbers handling the products of the respondent and similar products of respondent's competitors as an inducement to influence such salesmen to push the sale of respondent's products over its competitors.

(3) The respondent is directed, after the expiration of 60 days from the time that it is served with a copy of this order, to file with the Commission a written report as to steps that have been taken to comply with the terms of this order.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## HOLLAND PIANO MANUFACTURING CO.

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

Docket 577.—September 8, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of pianos and piano players, at the request of its customer dealers and for the purpose and with the effect of permitting them to make radical and abnormal discounts to ultimate purchasers and still receive customary prices for such instruments, stenciled thereon abnormally and unreasonably high fictitious values, with the tendency and effect of deceiving purchasers and the public into believing that such stenciled prices represented resale values based on cost plus a reasonable profit and that the corporation required or intended its customers to observe the same; having the tendency thereby to impede or suppress competition:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Holland Piano 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 respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business at the city of Minneapolis, in the State of Minnesota, and that respondent for more than one year last past has been and now is engaged in the business of manufacturing, selling, and shipping pianos and player pianos to, from, and among the various States of the United



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States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That with the purpose and effect of stifling and suppressing competition in the aforesaid interstate commerce in the sale and distribution of pianos and player pianos, respondent, in the regular course of its said business, stencils or causes to be stenciled on pianos and player pianos of its own manufacture resale prices which are calculated to deceive, and do deceive, the purchasing public and the public generally into the belief that purchasers and prospective purchasers derive greater benefits by purchasing pianos and player pianos manufactured by respondent than they would receive by purchasing pianos and player pianos of equal grade and quality manufactured by competitors of respondent, when in truth and in fact such prices so stenciled are not bona fide resale prices but represent values greatly in excess of values customarily received as resale values for pianos and player pianos of like kind, grade, and quality.

PAR. 3. That such prices are so stenciled on said pianos and player pianos by respondent in the regular course of his said business according to agreements with, or at the request of, customers of respondent, which customers are regularly engaged in the general business of merchandising and shipping pianos and player pianos to, through, and from the States and Territories of the United States; that such stenciled prices appearing on said pianos and player pianos are calculated to deceive, and do deceive, purchasers and prospective purchasers and the public generally into the belief that such stenciled prices represent bona fide resale values based on costs plus reasonable profits, and that respondent, as the manufacturer of such pianos and player pianos, requires, or intends, his said customers to demand or receive, from purchasers, or prospective purchasers, values equal to such stenciled resale prices; when in truth and in fact such stenciled prices do not represent bona fide resale values or values which respondent in any sense demands or intends his said customers to receive from purchasers, or prospective purchasers, but such stenciled prices represent abnormally and unreasonably high fictitious values so stenciled on said pianos and player pianos for the purpose of permitting respondent's said customers to make, and who in fact do make, radical and abnormal discounts therefrom, thus leaving the resale prices to be received, and which are received by said customers, far below such stenciled prices, yet equal to reasonable and full resale values usually received by said customers and other dealers and distributors for pianos and player pianos of equal quality, grade, and kind.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complainant upon the respondent, Holland Piano Manufacturing Co., charging it with the use of an unfair method of competition in commerce in violation of the provisions of said act.

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

And thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Holland Piano Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal office and place of business at the city of Minneapolis, in the State of Minnesota, and that respondent for more than one year last past has been and now is engaged in the business of manufacturing, selling, and shipping pianos and player pianos to, from, and among the various States of the United States, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the sale and distribution of pianos and player pianos, respondent in the regular course of its said business, from the date of its organization, in December, 1913, to and until the service upon it of the complaint in the proceeding on March 15, 1920, stenciled on pianos and player pianos of its own manufacture resale prices; that such prices were so stenciled on said pianos and player pianos by respondent in the regular course of its said business at the request of its customers; that such customers were and are regularly engaged in the general business of merchandising and shipping pianos and player pianos to, through, and among the several States and Territories of the United States; that such stenciled prices appearing on pianos and player pianos were calculated to deceive, and did deceive, purchasers and prospective purchasers and the public generally into the belief that such stenciled prices represented piano resale values based on cost plus reasonable profits, and that the respondent as the manufacturer of such pianos and player pianos required or intended its customers to demand or receive from pur-

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chasers or prospective purchasers such stenciled resale prices; that in truth and in fact such stenciled prices did not represent bona fide resale prices or prices which the respondent in any sense required or intended its said customers to receive from purchasers or prospective purchasers; that such stenciled prices represented abnormally and unreasonably high fictitious values, so stenciled on said pianos and player pianos for the purpose of permitting respondent's said customers to make radical and abnormal discounts therefrom; that respondent's said customers did make radical and abnormal discounts from such stenciled resale prices, and received prices for such pianos and player pianos far below such stenciled prices, and said reduced prices were equal to prices usually received by said customers and dealers and distributors of pianos and player pianos of equal quality, grade, and kind manufactured by competitors of respondent.

PAR. 3. That the practice described in the preceding paragraph of these findings has the tendency to impede or suppress competition in the sale of pianos and player pianos in and among the various States of the United States.

## CONCLUSION.

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

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

*It is now ordered,* That the respondent, Holland Piano Manufacturing Co., and its officers, directors, representatives, agents, servants, and employees, do cease and desist from directly or indirectly stenciling or causing to be stenciled, or in any other manner marking or causing to be marked upon pianos and player pianos manufactured by respondent, fictitious or misleading prices grossly in excess of the

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prices at which such pianos and player pianos are usually sold at retail.

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

## FEDERAL TRADE COMMISSION

v.

## THE OAKES COMPANY.

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

Docket 344.—September 9, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of fans for automobiles, motor trucks, and tractors, the largest output of which was of the cup-and-cone type, in competition with a concern similarly engaged, the largest output of which was a fan of the roller-bearing type,

- (a) Secured, through a detective whom it caused to be employed by said competitor, the names and addresses of persons to whom said competitor was shipping its product, the amount so shipped, and other information relative to its business;
- (b) Falsely represented to the trade that the roller-bearing type of fan costs less to manufacture than the cup-and-cone type and does not work satisfactorily; and
- (c) Manufactured and offered to the trade a fan similar to competitor's at a lower price, not in good faith for the purpose of sale, but solely to depreciate the value of its competitor's fan and induce the trade and the public to believe that said competitor was selling its fan at more than a fair price:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that The Oakes 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 Oakes 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 city of Indianapolis, in said State, and is now, and

at all times hereinafter mentioned has been, engaged in the manufacture and sale of pressed steel fans for automobiles, trucks, and tractors 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; 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 and the District of Columbia, and especially to and through the city of Indianapolis, State of Indiana, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 2. That the respondent, The Oakes Co., for more than one year last past, with the effect of hindering and embarrassing competitors in the conduct of their business and suppressing competition, has engaged the services of a private detective agency to spy upon the business of one of its competitors, said detective agency at the request and solicitation of respondent placing its operatives in the manufacturing plant of said competitor, and making daily reports to respondent of the names and addresses of customers of said competitor, amount of goods shipped, and other trade secrets and information belonging to and concerning the business of said competitor.

PAR. 3. That respondent, The Oakes Co., for more than one year last past attempted to induce a certain manufacturer to refrain from selling its products to a competitor of respondent, by statements to the said manufacturer that a salesman of said manufacturer was selling supplies to the competitor of respondent at too low a price and by intimating that there was collusion between the salesman and said competitor; and by threats that if said manufacturer continued selling respondent's competitor at such prices, that respondent would engage in the same line of business as said manufacturer; all with the purpose of cutting off the source from which said competitor obtained supplies, and with the effect of stifling and suppressing competition, and with other effects.

PAR. 4. That respondent, The Oakes Co., until recently has manufactured exclusively an automobile fan known in the trade as the cup-and-cone type of fan; that a certain competitor of respondent manufactures exclusively what is known as the roller-bearing type of fan, of which respondent was well aware; that it costs less to manufacture the cup-and-cone type of fan than it does the roller-bearing type of fan; that, with the purpose and effect of putting its competitor out of business, respondent thereafter began the manufacture of the roller-bearing type of fan, and has through its sales-

## Findings.

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men, agents, and other means represented to the trade that it costs less to manufacture the roller-bearing type of fan than it does the cup-and-cone type, such representations being false and misleading and made with the intent and purpose of depreciating the value of the roller-bearing fan in the opinion of the trade and causing the public to believe that its competitors who manufacture the roller-bearing type of fan are selling the same at more than a fair price.

PAR. 5. That respondent, the Oakes Co., until recently has manufactured exclusively an automobile fan known in the trade as the cup-and-cone type of fan; that a certain competitor of respondent manufactures exclusively what is known as the roller-bearing type of fan, of which the respondent was well aware; that it costs less to manufacture the cup-and-cone type of fan than it does the roller-bearing type of fan; that with the purpose and effect of putting its competitor out of business respondent thereafter began the manufacture of a roller-bearing fan, and has through its salesmen, agents, and other means offered to sell, and does sell, said roller-bearing type of fan for considerably less than the cup-and-cone type, and has offered to sell, and does sell, said roller-bearing type of fan at less than cost.

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

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

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

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

**FINDINGS AS TO THE FACTS.**

PARAGRAPH 1. Respondent is and was at the times mentioned in the complaint a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal office and factory in the city of Indianapolis, in said State, and is and was at all of said times engaged in manufacturing radiator fans for

automobiles, motor trucks, and tractors, and in selling and transporting its product in and among the several States of the United States and foreign countries.

PAR. 2. All of respondent's products, whether intended for interstate shipments or intrastate shipments, are and were at all of said times delivered f. o. b. cars at Indianapolis, Ind., and are and were so delivered by respondent to such carriers to be transported and delivered by such carriers to the purchasers in the State of Indiana and in other States of the United States.

PAR. 3. The Automotive Parts Co. is a corporation organized under the laws of the State of Indiana, having its office and factory in the city of Indianapolis, in said State, and is and has been since the month of February, 1918, engaged in manufacturing radiator fans for automobiles, motor trucks, and tractors, 85 per cent of which fans are of the roller-bearing type of fan equipped with Hyatt roller bearings. Its product is sold and transported into every State of the United States and into Canada and Australia.

PAR. 4. The respondent manufactures several types of fans for automobiles, motor trucks, and tractors; that is to say, hub-driven fans, shaft-driven fans, ball-bearing fans, plain bearing fans, and Timkin fans, its largest output being a type of fan known to the trade as the cup-and-cone fan.

PAR. 5. During the month of April, 1918, respondent hired and caused to be placed in the manufacturing plant of the Automotive Parts Co. a detective; that such detective applied to the superintendent of the Automotive Parts Co., and was hired as an employee of that company, and remained with the Automotive Parts Co. and worked in its plant continuously until about September 14, 1918, at which time it was discovered that he was in fact a detective in the employ of respondent, and was thereupon discharged by the Automotive Parts Co.

PAR. 6. During the months of August, September, and a part of the month of October, 1918, said detective made reports two or three times weekly, either to the respondent or to the Webster Detective Agency, with which he was connected, which reports were forwarded by said detective agency to respondent. These reports, among other information relative to the business of the Automotive Parts Co., contained the names and post-office addresses of the persons to whom the Automotive Parts Co. was shipping its product and the amount of such products shipped to each person.

PAR. 7. Said detective at the time he applied to the Automotive Parts Co. for employment asked to be assigned to a position on what is known as the assembly bench, and was given such position. The



## Findings.

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assembly bench is the place where the fans manufactured by the Automotive Parts Co. are prepared for shipment. After the fans are assembled they are placed on the floor a few feet from the assembly bench in the same room, and are there packed in boxes or crated for shipment, and marked with the name and post-office address of the purchaser. The packing and marking is done within the view of persons working at the assembly bench, and said detective frequently examined the boxes in which the fans were packed, and saw the names and post-office addresses of the purchasers.

PAR. 8. After said detective was discharged from the employ of the Automotive Parts Co. (Sept. 14, 1918), he hired one John Davis, an employee of the Automotive Parts Co., to furnish him with information as to the materials which came into and which went out of the plant of the Automotive Parts Co., and also the names and post-office addresses of the persons to whom the Automotive Parts Co. shipped its product. Said detective paid said John Davis for such services each night as the information was delivered.

PAR. 9. Respondent claims that there was a "leak" in its office by which the Automotive Parts Co. was obtaining information as to its business and that the detective was placed in the plant of the Automotive Parts Co. for the purpose of discovering such "leak."

PAR. 10. Louis Schwitzer is and has been since its organization the president of the Automotive Parts Co. He was, from October 1, 1916, to February 16, 1918, engineer and productive manager of respondent, and designed the roller-bearing type of fan manufactured by the Automotive Parts Co. He is an Austrian by birth and at the time of the hearing in this proceeding was not a citizen of the United States.

PAR. 11. The roller-bearing type of fan as manufactured by the Automotive Parts Co. costs approximately 48 cents more to manufacture than the cup-and-cone type of fan.

PAR. 12. The roller-bearing type of fan as made by the Automotive Parts Co. satisfactorily performs the work for which it was designed.

PAR. 13. Respondent has represented to the trade that the roller-bearing type of fan costs less to manufacture than the cup-and-cone type of fan and that the roller-bearing type of fan would not work satisfactorily.

PAR. 14. Respondent makes and offers to the trade a roller-bearing type of fan similar to the fan manufactured by the Automotive Parts Co. and offers it at a price less than the price charged by the Automotive Parts Co.

PAR. 15. Respondent does not offer its roller-bearing fan to the trade in good faith for the purpose of selling it, but solely for the

purpose of depreciating the value of the roller-bearing type of fan as manufactured by its competitor and inducing the trade and the public to believe that its competitor is selling its roller-bearing type of fan at more than a fair price.

#### CONCLUSIONS.

The several acts and conduct of the respondent as set forth in the foregoing findings as to the facts are, and each of them is, in the circumstances therein set forth, violations 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 the methods of competition set forth in said findings are, and each of them is, in the circumstances therein set forth, unfair methods of competition in interstate commerce.

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, The Oakes Co., having entered its appearance by Gavin & Gavin, its attorneys, and having served and filed its answer to said complaint, and testimony having been taken in support of said complaint and on behalf of said respondent in support of its answer, and the Commission having made its findings as to the facts and its conclusions in this proceeding, and on the date hereof having made and filed a 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: Therefore,

*It is hereby ordered,* That the respondent, The Oakes Co., its officers, agents, servants, and employees, cease and desist from placing or causing to be placed in the manufacturing plant of the Automotive Parts Co. a detective or detectives, or any other person, agent, or employee of the respondent, for the purpose of ascertaining any information relative to the business of said Automotive Parts Co., and particularly the names and post-office addresses of the persons to whom the Automotive Parts Co. ships its product and the amount of such product shipped to each such person, and from practicing any system of espionage upon the business of said Automotive Parts Co.

*It is further ordered,* That within 60 days from the date of the service of this order upon you you report to the Commission how and in what manner you have complied with the terms of this order.

Complaint.

S F. T. C.

## FEDERAL TRADE COMMISSION

## LEWIS PELSTRING.

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

Docket 600.—September 9, 1920.

## SYLLABUS.

Where an individual under the names of "Government Supply House" and "Pelstring's Government Supply House" falsely and deceptively advertised and offered for sale various paints and varnishes as "Government supplies," "War supplies," "Government spar varnish," and "Government structural paint, boxed for overseas shipment," the fact being that such paints and varnishes had never belonged to the Government or any department thereof, and that at the time of said advertisements he had in stock no paint, varnish, or war or other supplies of any kind with which the Government had been in any way connected:

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

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Lewis Pelstring, 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, Lewis Pelstring, is a resident of the State of Pennsylvania, having his principal office and place of business located in Philadelphia, in said State, and has been for more than one year last past and now is engaged in the business of selling paints, varnishes, and kindred products throughout various States of the United States, and at all times hereinafter mentioned has carried on said business in direct competition with other persons, firms, co-partnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the course of his said business has, within one year last past, caused to be inserted in various newspapers circulated in and among the several States of the United States various advertisements in which he has, under the names of "Government Supply House" and "Pelstring's Government Supply House" offered for sale various paints and varnishes designated by him as "Government supplies," "War supplies," "Government spar varnish," "Government structural paint, boxed for overseas shipment," when in fact said paints and varnishes had been bought by respondent from other dealers in the ordinary course of business, and had never belonged to the United States Government, or any department thereof.

PAR. 3. That, among others, three advertisements were printed on November 23, 1919, December 7, 1919, and December 28, 1919, respectively, in the "For sale" columns of the Philadelphia North American, a daily newspaper published in the city of Philadelphia, State of Pennsylvania, and having a large circulation throughout said State and the adjoining States.

PAR. 4. That at said times respondent did not have in stock any Government paint or varnish, or Government or war supplies of any kind, or any supplies which had been manufactured for the Government or boxed for overseas shipment, as stated in said advertisements, or any goods with which the United States Government had been in any way connected, of all of which facts respondent had full knowledge at the time of the publication of said advertisements.

PAR. 5. That by reason of the facts set out in the foregoing paragraphs of this complaint the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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

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

The respondent having filed his answer, wherein he admits that the matters and things alleged in said complaint are true in the manner and form alleged, and wherein respondent stipulates and agrees that the Commission shall take said answer as the evidence in this case and in lieu of testimony, and shall forthwith and there-

## Findings.

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upon make and enter its report, stating its findings as to the facts and its conclusion, and its order to cease and desist from the methods of competition complained of, disposing of this proceeding without the introduction of testimony or presentation of argument, and the Commission having duly considered the record and being fully advised in the premises, now makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Lewis Pelstring, is a resident of the State of Pennsylvania, having his principal office and place of business located in Philadelphia, in said State, and has been for more than one year last past, and now is, engaged in the business of selling paints, varnishes, and kindred products throughout various States of the United States, and at all times hereinafter mentioned has carried on said business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of his said business has within one year last past caused to be inserted in various newspapers circulated in and among the several States of the United States various advertisements in which he has, under the names of "Government Supply House" and "Pelstring's Government Supply House," offered for sale various paints and varnishes designated by him as "Government supplies," "War supplies," "Government spar varnish," "Government structural paint, boxed for overseas shipment," when in fact said paints and varnishes had been bought by respondent from other dealers in the ordinary course of business, and had never belonged to the United States Government or any department thereof.

PAR. 3. That, among others, three such advertisements were printed on November 23, 1919, December 7, 1919, and December 28, 1919, respectively, in the "For sale" columns of the Philadelphia North American, a daily newspaper published in the city of Philadelphia, State of Pennsylvania, and having a large circulation throughout the said State and the adjoining States.

PAR. 4. That at said times respondent did not have in stock any Government paint or varnish, or Government or war supplies of any kind, or any supplies which had been manufactured for the Government or boxed for overseas shipment, as stated in said advertisements, or any goods with which the United States Government had been in any way connected, of all of which facts respondent had full knowledge at the time of the publication of said advertisements.

PAR. 5. That the said advertisements are false and deceptive and misleading to the purchasing public.

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Order.

## CONCLUSION.

The practices of said respondent, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission, the complaint of the Commission, and answer of the respondent admitting that the matters and things alleged in said complaint are true in the manner and form alleged, and agreeing that the Commission shall take said answer as evidence in this case in lieu of testimony and dispose of this proceeding without the introduction of testimony or the presentation of argument, and the Commission having made and filed its findings as to the facts and its conclusion that respondent has violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

*It is now ordered*, That the respondent, Lewis Pelstring, his agents, representatives, servants, and employees, do cease and desist from publishing or causing to be published advertisements under or in connection with such names as "Government Supply House" and "Pelstring's Government Supply House," or any other names, offering for sale paints, varnishes, or kindred products under or in connection with such designations as "Government supplies," "War supplies," "Government spar varnish," "Government structural paint, boxed for overseas shipment," or under any other designation similar thereto, when said paints or varnishes have never belonged to the United States Government or to any department thereof.

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

Complaint.

3 F. T. C.

## FEDERAL TRADE COMMISSION

v.

## COMMONWEALTH COMPANY.

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

Docket 401.—September 14, 1920.

## SYLLABUS.

Where a corporation engaged in the sale of groceries by mail, exclusively in combination orders composed of one or more well-known staple articles and others not so well known, to customers having no knowledge of its costs and profits, in advertising said orders

- (a) Set forth prices of the different items as "Our wholesale price to you," which prices, for the well-known staple articles, were less than cost, but for the others were sufficiently in excess thereof to afford a satisfactory profit on the order as a whole;
- (b) Overstated the retail prices ordinarily asked for the different items composing the various orders;

With the effect, taken in connection with other false and misleading statements, of deceiving and misleading the public into believing that it was selling all items on the basis suggested by the prices assigned to the well-known staple articles, and, in general, that it was selling groceries at prices less than those charged by competitors, instead of at the same or higher prices:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Commonwealth 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 Commonwealth 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 in the city of Chicago in said State, and is now, and for more than a year last past has been, engaged 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 its 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 gives 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.

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

The respondent having failed to answer said complaint within the time prescribed by law and the rules of practice of the Commission, or at all, due notice was served upon the respondent of the time and place of hearing and thereupon hearings were had before an examiner of the Commission, theretofore duly appointed, and evidence was introduced in support of the allegations of the complaint, and the respondent, by its attorney, Charles B. Stafford, Esq., appeared and stated of record that it would neither submit testimony nor make a defense herein.



## Findings.

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And thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, make this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Commonwealth 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 in the city of Chicago, in said State, and at the time of the issuing of the Commission's complaint and for more than a year last past therefrom has been engaged 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 all of the time herein mentioned respondent in the conduct of its business in the sale of groceries in interstate commerce as aforesaid 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 price 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 gives 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.

PAR. 3. That the respondent in conducting its business solicited the general public, customers, and prospective customers, by means of representations contained in catalogues and other advertising matter of which the Commission's Exhibits 1, 2, 3, 4, 7, and 8 are copies heretofore duly received in evidence, and which respondent caused to be published and circulated through the States and Territories of the United States and the District of Columbia.

PAR. 4. That during the first two months of the conduct of respondent's said business respondent received, as a result of such representations contained in said catalogues and other advertising matter, orders for combinations or assortments of grocery products amounting to from \$6,000 to \$8,000, and was receiving at the end of that time approximately 100 orders a day; and that the various items comprising such orders were sold at the total respective prices for the various combinations or assortments; and that respondent refused to sell separately the items of grocery products comprising such combinations or assortments at the ostensible prices or figures appearing opposite each item of such combinations or assortments so advertised and offered for sale.

PAR. 5. That the prices published in said Exhibits 1, 2, 3, 4, 7, and 8, under the heading "Approximate retail price," were at all times herein mentioned higher than prices ordinarily asked by retail dealers for similar articles of equal or better quality.

PAR. 6. That the figures, ostensible prices, published in said exhibits and appearing under the heading "Our wholesale price to you," have no relation whatever to the articles opposite to which they appear as prices, but are arbitrary figures selected and arranged so as to equal the total price of each combination or assortment, which total price is the only price respondent intended to receive, and did receive, for the grocery products comprising each such assortment so advertised and sold; that such figures, ostensible prices, in so far as they are published and placed opposite to or in connection with the items sugar and flour in said exhibits, except pages 15 to 24, inclusive, in said Exhibit 8, are less than the wholesale prices, or any prices, at which respondent during any time mentioned herein could buy sugar or flour, while figures, ostensible prices, placed opposite some other items named in such combinations or assortments, are in excess of actual prices which would afford respondent a reasonable profit on the sale of such items; and that the only figures published as prices in connection with any given assortment or combination in any of said exhibits which represent actual or bona fide prices are the figures representing totals, and no others.

PAR. 7. That the column of figures, ostensible prices, as they appear in said exhibits under the often-repeated heading "Our wholesale price to you," is constructed in such a manner that if respondent actually sold such items at the figures, ostensible prices, appearing opposite thereto, respondent would be selling sugar and flour and other staples, the prices of which are well known to the public generally, at prices far below the wholesale cost of such staples, while the figures, ostensible prices, placed opposite such items, the prices

## Conclusions.

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of which are not well known to the public generally, are far in excess of the wholesale prices which respondent pays for such items, so that if respondent actually sold said items at the said figures, ostensible prices, appearing opposite each of said items, it would make up on the less-known articles the loss which would be sustained on staples, the prices of which are well known to the public generally.

PAR. 8. That such figures, ostensible prices, as appear under said heading, "Our wholesale price to you," do not show the true price which customers and prospective customers pay for the individual items composing such combination; that if respondent eliminated entirely all such figures, ostensible prices, or substituted any other set of figures therefor whose sum equals such total price, irrespective of how such figures would be arranged with reference to said items, customers and prospective customers would pay no more or no less for such flour or sugar or any other item or all of the items named in such combination or assortment than such customers now pay respondent.

PAR. 9. That each such total price received for said combination or assortment is sufficient to yield respondent a satisfactory profit.

PAR. 10. That respondent does not possess any advantages in buying grocery products which enable it to sell such products at prices lower than other dealers.

PAR. 11. That respondent sells neither sugar at 3 cents a pound nor flour at \$7 per barrel, nor does it sell either of these staples or any other product named as an item in such combinations or assortments at any price which respondent specifies in connection therewith; that the price received for any given combination as a whole is approximately the same or greater than the sum of the prices at which the items composing such combination or assortment ordinarily sell for at retail as separate items; that the price which respondent actually receives for any such item equals the cost of each item plus a portion of the gross profit on the combination or assortment as a whole; that customers and prospective customers have no knowledge of respondent's costs and profits; and the actual price paid by such customers for any item named in said combinations or assortments is further hidden by the figures, ostensible prices, published under the said heading, "Our wholesale price to you."

## CONCLUSIONS.

That the methods set forth in the foregoing findings of fact, under the circumstances therein set forth, are unfair methods of competition, in violation of the provisions of section 5 of the act of Congress

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

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the statement of the respondent by its attorney, Charles B. Stafford, Esq., that it would not make a defense herein, the testimony and evidence in support of the allegations of the complaint, and the Commission having made its findings as to the facts with its conclusion that respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes":

*It is now ordered*, That the respondent, Commonwealth Co., its officers, agents, representatives, servants, and employees, do cease and desist, both directly and indirectly:

From circulating or causing to be circulated advertisements offering for sale commodities in combination or assortment lots wherein figures, or ostensible prices, appear opposite to or otherwise in connection with the individual items of such combinations or assortments, when such figures, or ostensible prices, have no true relation to such items, but appear in such amounts as when added will equal the price at which such combinations or assortments are sold as a whole;

From constructing or arranging such ostensible prices in such manner that if the individual items were actually sold at the figures, or ostensible prices, appearing opposite to or otherwise in connection therewith, commodities the prices of which are well known to the public generally would be sold below cost thereof, while commodities the prices of which are not well known to the public generally would be sold sufficiently above the cost thereof to make up on the less-known articles the loss which would be sustained on commodities the prices of which are well known to the public generally;

From misrepresenting the true price at which commodities are actually sold by advertising figures purporting to be prices which for one or more items forming a part of such combination or assortment equal the cost of such items plus a gross profit on the entire combination plus a minus difference between cost and an apparently lower price for staples or other remaining items or item, when such staples or remaining items or item forming part of such combination or assortment are not separately sold at the figures purporting to be prices so advertised;

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From placing opposite to, or in connection with such individual items, figures misrepresenting prices at which said items could be purchased from competitors; and

From circulating any statements or representations having a tendency or capacity to falsely discredit competitors or their methods of doing business, or which deceive or mislead customers, prospective customers, or the public generally as to the actual prices of commodities so offered for sale, or as to the true character of the transaction advertised.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

WILLIAM H. PLUNKETT TRADING AS PLUNKETT  
CHEMICAL CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5  
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 572.—September 14, 1920.

## SYLLABUS.

Where an individual engaged in the manufacture and sale of cleaning and disinfecting fluids and similar products,

- (a) Circulated among customers, dealers, and the public, printed pamphlets containing excerpts from an address by a physician, and printed in a public health bulletin by the United States Public Health Service, so gotten up as reasonably to lead readers to believe that said Public Health Service had sweepingly condemned the use of drip machines employed by his competitors as toilet disinfectors, the fact being that the individual quoted was not connected with said service and did not speak for it; and
- (b) Falsely stated that he had the word of every health authority in the country that drip cans were a fraud, and that their use had been discarded and prohibited as unsanitary in every United States public building;

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

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that William H. Plunkett (trading under the name and style of Plunkett Chemical 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, William H. Plunkett (trading under the name and style of Plunkett Chemical Co.), is a resident of the city of Chicago, in the State of Illinois, and for more than one year last past has been engaged in the manufacture and sale of cleansing and disinfecting fluids and similar products, and in the transportation of the same from his place of business in the city of

## Findings.

3 F. T. C.

Chicago, in the State of Illinois, to purchasers thereof in other States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other individuals, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent for more than one year last past in the conduct of his business has published and circulated throughout the States of the United States letters, pamphlets, and other advertising matter, in which he quotes an excerpt from an article which appeared in a bulletin of the United States Public Health Service, said article being as follows:

The fallacious drip machine, the so-called continuous toilet disinfector, should be mentioned only to be condemned. It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions that need mending.

That the said article was written by a private physician not in the employ of or connected in any way with the United States Public Health Service, and did not receive the sanction and approval of said service by reason of its being published in one of its bulletins; that the respondent uses language such as "only to be condemned, says Uncle Sam," in said advertising matter, and other language which misleads the public into the belief that the United States Public Health Office had condemned the use of the drip disinfectors; that the respondent knowingly published and circulated said articles and statements with the intent, purpose, and effect of hindering, harassing, and embarrassing competitors engaged in the manufacture of said drip disinfectors and to prevent the sale thereof.

PAR. 3. That the respondent for more than one year last past, in the conduct of its business, has circulated letters to the public throughout the various States of the United States in which it makes the statement that drip cans are a fraud; that every health authority in the country has condemned them and that they have been discarded and prohibited in every United States public building as unsanitary; that said statements are false and misleading and that respondent knowingly circulated said statements with the intent, purpose, and effect of hindering, harassing, and embarrassing competitors in the manufacture of drip disinfectors and to prevent the sale thereof.

### 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, William H. Plunkett, trading as

Plunkett Chemical Co., had been and then was 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 attorneys and having duly filed his answer admitting certain of the allegations of said complaint and denying certain others thereof, and the attorneys for both parties having 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 by the Commission in lieu of testimony and that the Commission should forthwith proceed upon such agreed statement of facts to make and enter its report stating its findings as to the facts and its conclusions and an order disposing of the proceeding; the Commission and respondent having through their respective attorneys filed briefs and arguments, and the Commission having duly considered the same and the record and being fully advised in the premises, makes this its report and findings of facts and conclusions:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, William H. Plunkett, is and for more than one year last past has been a resident of the city of Chicago, State of Illinois, doing business under the trade name and style of Plunkett Chemical Co.; that he has been and is engaged in the manufacture of cleaning and disinfecting fluids and similar products, and the sale and distribution of the same, from his principal place of business in said city of Chicago, State of Illinois, to purchasers thereof in the several States of the United States, and the Territories thereof, and the District of Columbia, and foreign countries, in competition with other individuals, partnerships, and corporations engaged in a similar occupation.

The respondent maintains, and for more than one year last past has maintained, a branch office and place of business at 61 Park Place, New York City, State of New York, known as the "General Eastern Office," with an officer or agent in charge thereof known as the "General eastern manager"; said general eastern office is the general office of the respondent in the Eastern States of the United States; one F. W. Gates has been and still is the officer or agent in charge of said general eastern office, and was and is authorized and empowered to transact and conduct the respondent's business throughout the Eastern States of the United States.



## Findings.

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PAR. 2. In the conduct of respondent's business in said city of Chicago and in said city of New York for more than one year last past the respondent has published and distributed, through the United States mail and otherwise, to customers, dealers, and the public generally, a printed pamphlet advertising his said business, labeled and entitled on the outside of the first cover page as follows:

"Conservation of Health," "A word on an important subject," "From Plunkett Chemical Company, main office and laboratory, Chicago, U. S. A."; that on the inside of the back cover page of this pamphlet were the following words and figures, to wit:

Extracts from Public Health Report, issued by United States Public Health Service, Washington, D. C., August 11, 1916. Volume 31, No. 32, page 2141.

The fallacious drip machine, the so-called continuous toilet disinfectant, should be mentioned only to be condemned. It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions which need mending.

Copies may be had for 5¢ a copy by addressing the Superintendent of Documents, Government Printing Office, Washington, D. C.

PAR. 3. The respondent also published another printed pamphlet and distributed the same, through the United States mail from his said Chicago and New York offices, to customers, dealers, and the public generally, which pamphlet was labeled and entitled on the first page of the cover sheet as follows: "Stop," "Flagged!" "Just in time to prevent your plant from becoming a disease-breeding spot for your operatives." "Set the switch 'clear' to-day." On the inside page of the back cover sheet of said printed pamphlet are the words and figures, to wit:

## Warning from Uncle Sam!

The fallacious drip machine, the so-called continuous toilet disinfectant, should be mentioned only to be condemned.

It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions that need mending.

(Extract from U. S. Public Health Bulletin, Aug. 11, 1916, page 2141, issued by the U. S. Public Health Service, Washington, D. C.)

PAR. 4. Both of the excerpts set forth in Findings 2 and 3 were copied from an address delivered by Thomas R. Crowder, M. D., of Chicago, before the meeting of the New York Railroad Club held April 21, 1916, and published in the Public Health Report of August 11, 1916, a report issued weekly by the United States Public Health Service. On the page of said Public Health Report for August 11, 1916, facing the table of contents appears the following:

## UNITED STATES PUBLIC HEALTH SERVICE.

RUPERT BLUE, *Surgeon General*.

DIVISION OF SANITARY REPORTS AND STATISTICS.

Asst. Surg. Gen. JOHN W. TRASK, *Chief of Division*.

The Public Health Reports are issued weekly by the United States Public Health Service through its Division of Sanitary Reports and Statistics, pursuant to acts of Congress approved February 15, 1893, and August 14, 1912.

They contain: (1) Current information of the prevalence and geographic distribution of preventable diseases in the United States in so far as data are obtainable, and of typhus fever, cholera, plague, yellow fever, smallpox, and other communicable diseases throughout the world. (2) Sanitary legislation, including court decisions on matters relating to public health administration and the laws and regulations being enacted or adopted by State and municipal authorities for the safeguarding of the public health. (3) Articles relating to the cause, prevention, or control of disease. (4) Other pertinent information regarding sanitation and the conservation of the public health.

The Public Health Reports are intended primarily for distribution to health officers, members of boards or departments of health, and those directly or indirectly engaged in or connected with public health or sanitary work. Articles of general or special interest are issued as reprints from the Public Health Reports or as supplements, and in these forms are available for general distribution to those desiring them.

Requests for and communications regarding the Public Health Reports, reprints, or supplements should be addressed to the Surgeon General, United States Public Health Service, Washington, D. C.

A reprint was made of Dr. Crowder's address by the United States Public Health Service, and a supply kept on hand for general distribution. The excerpts from the address of Dr. Crowder were printed in respondent's said pamphlets in such a manner as to reasonably lead the reader to believe that it was the utterance of a public health official of the United States Public Health Service.

PAR. 5. On August 14, 1919, F. W. Gates, the general eastern manager, in charge of respondent's general eastern office, wrote and sent through the United States mail to Wm. Wrigley, Jr., & Co., Brooklyn, N. Y., a letter in which among other things, he said:

Drip cans are a fraud. We make that statement just as flat, broad, and unqualified as it is possible. We have the word of every health authority in the country. They have been discarded and prohibited in every United States public building as *unsanitary*.

Said letter was not circularized generally to the customers, the trade, and the public; two or three letters containing similar language to that hereinabove in this finding quoted were written and sent by said general eastern manager to other persons.

Neither the respondent nor the respondent's general eastern manager had obtained the word of every health authority in the country

Order.

3 F. T. C.

concerning "drip cans." "Drip cans" had not, at the time said letters were written, and have not yet, been discarded and prohibited in every United States public building as unsanitary.

## CONCLUSIONS.

Under the conditions and circumstances set forth in the foregoing findings of fact, the acts and practices of the respondent 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 above-named respondent having entered his appearance by his attorney and having duly filed an answer admitting certain of the allegations of the complaint and denying others therein contained, and thereafter the respective attorneys for the Federal Trade Commission and said respondent having signed and filed an agreed statement of facts wherein and whereby it was agreed that the said statement of facts should be taken by the Federal Trade Commission in lieu of testimony; and the Commission having heretofore made and filed its report stating 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," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is hereby ordered,* That the respondent, William H. Plunkett, trading as Plunkett Chemical Co., his agents and employees, do cease and desist from incorporating the following excerpts as an utterance or statement of an official of the United States Public Health Service in any and all printed pamphlets, circulars, letters, and other advertising media hereafter published and circulated among the trade and purchasing public throughout the United States:

## Warning from Uncle Sam!

The fallacious drip machine, the so-called continuous toilet disinfector, should be mentioned only to be condemned.

It does not disinfect; it only distills an odor, sometimes worse than the one it tries to hide, and diverts attention from conditions that need mending.

(Extract from U. S. Public Health Bulletin, Aug. 11, 1916, page 2141, issued by the U. S. Public Health Service, Washington, D. C.)

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## Order.

*It is further ordered,* That the respondent, William H. Plunkett, trading as Plunkett Chemical Co., his agents and employees do cease and desist writing and circulating among the trade and purchasing public throughout the United States any letter, circular, pamphlet, or other advertising media containing the statement that—

Drip cans are a fraud. We make that statement just as flat, broad, and unqualified as it is possible. We have the word of every health authority in the country. They have been discarded and prohibited in every United States public building as *unsanitary*.

*It is further ordered,* That the said William H. Plunkett file a report in writing with this Commission, within 30 days after the service upon him of this order, showing the manner and extent of his compliance therewith.

Complaint.

3 F. T. C.

## FEDERAL TRADE COMMISSION

v.

## EVERYBODY'S MERCANTILE COMPANY.

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

Docket 598.—September 14, 1920.

## SYLLABUS.

Where a corporation engaged in the sale and distribution of coffees at wholesale gave and offered to give to customers, as an inducement to secure their patronage, certain personal property of unequal values, which was intended to be, and was, distributed to ultimate purchasers by lot or chance:

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

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Everybody's Mercantile 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, Everybody's Mercantile 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 Iowa, having its principal factory, office, and place of business located in Sioux City, Iowa.

PAR. 2. That respondent now and for more than two years last past has been engaged in the roasting and selling to the trade its brand of coffee, known as Honest Value coffee, packed in pound containers, among the several States of the United States, Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That for more than one year last past the respondent, Everybody's Mercantile Co., in the distribution and sale of its products as aforesaid, has given and offered to give, and is now giving and offering to give customers and prospective customers, as an inducement to secure their trade and patronage, certain papers, coupons, or certificates, which were and are redeemable in various prizes or premiums, consisting of personal property of unequal values, the distribution of which was and is determined by chance or lot.

PAR. 4. Respondent is a manufacturer and wholesale grocer, and is engaged in interstate commerce by selling and distributing its goods to retailers in the States of Iowa, Nebraska, South Dakota, Minnesota, and other States. It sells goods both by traveling salesmen and by mail orders. It resorts to various sales schemes to promote its business among these States. It adopted and put into effect one from February 20, 1920, to March 20, 1920, as follows: It offered and sold to the trade its brand of coffee known as Honest Value coffee, packed in pound containers, and in each container it inclosed a coupon calling for certain free goods or prizes to be distributed by the retail merchant to the ultimate purchaser or consumer of these goods. Each 50-pound lot of coffee contained 45 coupons calling for one bar of candy, value 10 cents; 2 coupons calling for one package of O. U. Jell powder, value 10 cents; 2 coupons calling for 1 pound of baking powder, value 25 cents; and 1 coupon calling for one 4-pound package of pancake flour, value 35 cents. The merchants bought from the respondent the goods called for by these coupons and handled them in trade. Upon the presentation of these coupons by the purchasers of the coffee they were redeemed by the retail merchant by the delivery of the goods called for and sent in to the respondent to redeem them in cash according to the values above recited, and were so redeemed by respondent.

PAR. 5. That by reason of the facts set out in the foregoing paragraphs of this complaint the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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

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

## Findings.

S F. T. C.

The respondent having entered its appearance and filed its answer herein, and both parties to this proceeding being desirous of expediting the disposition thereof, signed and executed an agreed statement of facts subject to the approval of the Commission that said statement of facts shall be taken by the Commission with the same force and effect as if testified to upon a hearing regularly had in this proceeding, and the respondent having stated that it did not wish to file any brief or make any oral argument in said case, and thereupon this proceeding came on for final hearing; and the Commission being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Everybody's Mercantile 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 Iowa, having its principal factory, office, and place of business located in Sioux City, Iowa.

PAR. 2. That respondent now and for more than two years last past has been engaged in the roasting and selling to the trade its brand of coffee known as Honest Value coffee, packed in pound containers, among the several States of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That respondent, Everybody's Mercantile Co., in the distribution and sale of its products as aforesaid has given and offered to give customers and prospective customers, as an inducement to secure their trade and patronage, certain papers, coupons, or certificates which were and are redeemable in various prizes or premiums consisting of personal property of unequal value, the distribution of which was and is determined by chance or lot. Respondent is a manufacturer and wholesale grocer, and is engaged in interstate commerce by selling and distributing its goods to retailers in the States of Iowa, Nebraska, South Dakota, Minnesota, and other States. It sells goods both by traveling salesmen and by mail orders.

PAR. 4. Respondent adopted and put into effect from February 20, 1920, to March 20, 1920, a plan or scheme as follows: It offered and sold to the trade its brand of coffee known as Honest Value coffee, packed in pound containers, and in every container it inclosed a coupon calling for certain free goods or prizes to be distributed by the retail merchant to the ultimate purchaser or consumer of these goods. Each 50-pound lot of coffee contained 45 coupons calling for one bar of candy, valued at 10 cents; 2 coupons each calling for 1

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package of O. U. Jell Powder, value 10 cents; 2 coupons each calling for 1 can of Honest Value baking powder, value 25 cents; and 1 coupon calling for one 4-pound package of pancake flour, value 35 cents. The merchants bought from the respondent the goods called for by these coupons, and handled them in trade. Upon the presentation of these coupons by the purchasers of coffee they were redeemed by the retail merchant by the delivery of the goods called for, and sent in to the respondent to redeem them in cash according to the values above recited, and were so redeemed by respondent.

PAR. 5. The quality of such products so manufactured, sold, and distributed by respondent is substantial and forms an important item of commerce among several States of the United States.

#### CONCLUSION.

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

#### ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondent, Everybody's Mercantile Co., cease and desist in the distribution and sale of its products from giving or offering to give to its customers or prospective customers, as an inducement to secure their trade and patronage, any papers, coupons, or circulars redeemable in prizes or premiums consisting of personal property of unequal value, the distribution of which was and is determined by chance or lot.

*It is further ordered,* That the respondent, within 60 days after the date of the service upon it of this order, file with the Commission a written report of the manner in which it has complied with the terms hereof.



Complaint.

3 F. T. C.

## FEDERAL TRADE COMMISSION

v.

SAMUEL WEINBERG, DOING BUSINESS UNDER THE  
TRADE NAME AND STYLE OF THE INTERNATIONAL  
FLAXOL CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5  
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 597.—September 17, 1920.

## SYLLABUS.

Where an individual engaged in the preparation and sale of an oil which he called Flaxol, for use in the preparation of paint, advertised the same to be "Oil," "Raw oil," "Polled oil," "Improved linseed oil," stating in such advertisements that "Users tell us it is really better than just linseed oil," a "new-process oil made especially for the paint trade," and "A pure linseed oil equivalent used for paint-making purposes"; the fact being that Flaxol was not the equivalent of flax or linseed oil, and the natural and probable tendency of such advertisements being to mislead the public and to induce the purchase thereof as and for flax oil or linseed oil;

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

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Samuel Weinberg, doing business under the trade name and style of the International Flaxol 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. The respondent, Samuel Weinberg, as the International Flaxol Co., for more than one year last past has sold and transported, and now sells and transports, from Boston, in the State of Massachusetts, to purchasers thereof throughout the United States

a certain product, which respondent has named and advertises as Flaxol, thereby indicating that it is a product or derivative of flax and the equivalent of linseed oil, the well-known product of flax, sometimes called flaxseed oil, in competition with persons, partnerships, and corporations engaged in the sale of linseed oil.

PAR. 2. Flaxol contains only a small and immaterial amount of linseed oil, is not a product or derivative of flax or the equivalent of linseed oil, and the natural and probable tendency of the advertisement of said commodity as Flaxol is to mislead the public to believe that Flaxol is produced from flax and induce its purchase as and for linseed oil.

PAR. 3. The said conduct of respondent in so advertising and selling Flaxol is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act.

PAR. 4. That by reason of the facts set out in the foregoing paragraphs of this complaint the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Samuel Weinberg, doing business under the trade name and style of International Flaxol Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having filed his answer herein, in his own proper person, a hearing was had and evidence was thereupon introduced in support of the allegations of said complaint, the respondent appearing in his own proper person before an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, the respondent having waived oral argument and the presentation of a brief, and the Commission, having considered the brief of its counsel and duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Samuel Weinberg, the respondent herein, is now conducting business at No. 61-63 Wareham Street, Boston, Mass.,

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3 F. T. C.

under the trade name and style of International Flaxol Co. Prior to the inauguration of his present business under said trade name he was the general manager of the Flaxol Co., at the same address in said city of Boston. Respondent's principal business is the preparation and sale of an oil to be used by painters in the preparation of paint, which respondent calls Flaxol. During the times mentioned in the complaint herein the respondent advertised and sold in commerce Flaxol to take the place of linseed oil or flax oil. For three or four months during the spring of 1919 the respondent maintained an office at No. 101 Beekman Street in the city and State of New York, but does not now maintain an office in New York. Respondent is engaged in interstate commerce.

PAR. 2. During the times mentioned in the complaint herein the respondent has in divers ways advertised his said product called Flaxol to be "Raw oil," "Boiled oil," "Improved linseed oil," and "Flaxol is oil." Respondent has during the times hereinabove mentioned informed the purchasing public and the trade generally by various advertising mediums that his product is an "Improved linseed oil," because "users tell us it is really better than just linseed oil," that "Flaxol is a new-process oil made specially for the paint trade"; and that "Flaxol is pure linseed oil equivalent, used for paint-mixing purposes."

PAR. 3. Linseed oil is made from flaxseed and is known as flax oil as well as linseed oil. Linseed oil is used largely for mixture of paints. Flaxol, the product manufactured and sold in commerce by the respondent, is not the equivalent of flax oil, which is also called linseed oil, and the natural and probable tendency of the advertisements of said commodity as Flaxol is to mislead the public and to induce its purchase as and for flax oil or linseed oil.

#### CONCLUSION.

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

#### ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclu-

## Order.

sion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

*It is now ordered,* That the respondent, Samuel Weinberg, doing business under the trade name and style of International Flaxol Co., cease and desist from advertising and offering for sale under the name "Flaxol" the preparation heretofore sold by him under that name; and to cease and desist from using the term "Flaxol" as descriptive of any preparation which is not in fact a fair substitute for flax oil (usually called linseed oil).

*It is further ordered,* That the said Samuel Weinberg, within 30 days after the service upon him of this order, file with the Federal Trade Commission a written report of the manner in which he has complied with the terms of this order.

## FEDERAL TRADE COMMISSION

v.

## LUBRIC OIL 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 329.—September 21, 1920.

## SYLLABUS.

Where a corporation competitively engaged in refining crude petroleum, in 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;

(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 Lubric Oil 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, Lubric Oil Co., is 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 at the city of Cleveland, 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

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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 Lubric Oil 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, Lubric Oil Co., is 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 in the city of Cleveland, 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



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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.

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 Lubric 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 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 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 to 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 matters as were made an issue herein, 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 parties having introduced their evidence, and the respondent having filed a brief by its attorney, and the respondent by its attorney having waived oral argument, and the Commission having duly considered the complaint, answer, stipulation, and record herein, 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 Ohio, with its principal office and place of business in the city of Cleveland, in said State, 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, in connection with its aforesaid business, engaged also 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, and copartnerships also engaged in the business of selling refined oil and gasoline and refining crude petroleum.

PAR. 2. That 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 from 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 and in the conduct of its business as aforesaid, has been and now is leasing to retailers of its petroleum products said devices for

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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 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 lessee 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.

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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 restraints 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, the Lubric Oil Co., a corporation organized under the laws of the State of Ohio, 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 Congress of Septem-

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ber 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, 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 statements was to 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 matters as were made an issue herein, 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 parties having introduced their evidence, and the respondent having filed a brief by its attorney, and the respondent by its attorney having waived oral argument, and the Commission having duly considered the complaint, answer, stipulation, and record herein; 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, Lubric Oil 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 purposes 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

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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 5 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 Lubric Oil Co., respondent, shall within 30 days after the expiration of the time allowed for the respondent to comply with this 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.

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The Commission has also issued a similar order in the case of Bartles Oil Co. (of St. Paul, Minn., Docket 332), decided September 21, 1920, involving substantially the same facts as the preceding case.

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## FEDERAL TRADE COMMISSION

v.

THOMAS K. BRUSHART, DOING BUSINESS UNDER THE  
FIRM NAME AND STYLE OF THE MOTOR FUEL &  
LUBRICATING CO.

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 305.—September 27, 1920.

## SYLLABUS.

Where an individual competitively engaged in buying and selling petroleum products, 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 his 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 him a reasonable profit on his investment upon the condition that they should use the same only for the purpose of storing and handling his products, a practice not followed by many competitors, having for its purpose the furtherance of his 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 him 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 Thomas K. Brushart, doing business under the trade name of Motor Fuel & Lubricating 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 an act of 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, Thomas K. Brushart, is doing business under the trade name of Motor Fuel & Lubricating Co., with his principal office and place of business located at the city of Baltimore, in the State of Maryland; 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 his 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 his 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



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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 his 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 his 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 Thomas K. Brushart, doing business under the trade name of Motor Fuel & Lubricating 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 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 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, Thomas K. Brushart, is doing business under the trade name of Motor Fuel & Lubricating Co., with his principal office and place of business located at the city of Baltimore, in the State of Maryland; 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 his 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 his 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 con-

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tain 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 his 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 his 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.

(Amended.)

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 to 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 matters as were made an issue herein; 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 as designated, and the Commission having duly heard evidence on behalf of the Commission and respondent, 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 an individual trading under the firm name and style of the Motor Fuel & Lubricating Co., with its office and place of business located in the city of Portsmouth, in the State of Ohio; that during all the time hereinafter mentioned respondent has been and now is engaged in the business of buying gasoline and other oils and lubricants, hereinafter known as "products," and in transporting and marketing said products, and in buying and selling and leasing pumps and tanks and their equipments, hereinafter known as "equipments," in competition with numerous other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business as aforesaid, buys said 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 aforesaid has entered during said period and is now entering into contracts with lessees; 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

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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 sub-

mitted to the Commission, subject to its approval, an agreed statement of facts in said cause, which statement was to 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 Commission 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, Thomas K. Brushart, shall cease and desist from:

1. Directly or indirectly leasing pumps or tanks, or both, and their equipment 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 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 orders com-

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tained 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.

*And 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 Thomas K. Brushart, respondent, shall, within 20 days after the expiration of the time allowed within which respondent shall fully comply 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 there shall be 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 attached 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.	Docket No.	Respondent.	Location.	Answer, stipulation, or trial.
1920.				
Sept. 27	85	Standard Oil Co. of Indiana <sup>1</sup> .....	Chicago, Ill.....	Answer, stipulation, and trial.
27	133	Standard Oil Co. of Indiana <sup>2</sup> .....	.....do.....	Answer and stipulation.
27	314	C. L. Smith Oil & Gasoline Co.....	St. Louis, Mo..	Answer and trial.
27	317	The White Star Oil Co.....	Eaton, Ohio.....	Do.
27	318	The Paragon Refining Oil Co.....	Toledo, Ohio....	Answer, stipulation, and trial.
27	319	Hickok Producing Co.....	.....do.....	Answer and trial.
27	321	The Columbus Oil Co.....	Columbus, Ohio.	Answer, stipulation, and trial.
27	322	Carbonless Oil Co.....	Kenton, Ohio....	Do.
27	323	The Canfield Oil Co.....	Cleveland, Ohio.	Do.
27	326	The Independent Distributing Co.....	Columbus, Ohio.	Answer and trial.
27	327	The Lilly White Oil Co., Inc.....	Lima, Ohio.....	Answer, stipulation, and trial.
27	330	Iowa Oil Co.....	Dubuque, Iowa.	Answer and trial.
Dec. 18	690	Standard Oil Co. of Ohio <sup>3</sup> .....	Cleveland, Ohio.	Answer and stipulation.

<sup>1</sup> See case reported in II F. T. C. 26.

<sup>2</sup> See case reported in II F. T. C. 46.

<sup>3</sup> Amended findings and order entered as of Sept. 27, 1920 (Docket 132) against the same respondent were rescinded by the Commission in an order dated Dec. 18, and the above findings and order in Docket 690 entered as stipulated, on certain evidence taken, and on all evidence introduced and stipulated in the proceeding in Docket 132, respondent reserving, however, all questions of jurisdiction. The findings and order referred to in Docket 132 were set aside, because the complaint, which charged a violation of section 2 of the Clayton Act, as well as section 5 of the Federal Trade Commission act, was not supported by the testimony.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

McKNIGHT-KEATON GROCERY CO., WOOD & BENNETT CO., THE SCUDDERS-GALE GROCER CO., AND RAY L. HOSMER AND THOS. W. WATSON, COPARTNERS TRADING AS RAY L. HOSMER & CO.

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

Docket 258.—September 28, 1920.

## SYLLABUS.

Where certain jobbers in competition with a corporation in which retail grocers held stock, but which did not limit its sales to stockholders and did not sell to consumers,

- (a) Protested (in the case of one of their number) to a nationally known manufacturer against selling to it;
- (b) Induced and compelled a manufacturer's agent, to whom all had severally given orders, to withhold its purchase, by threatening to refuse their own, which had arrived and, in the aggregate, far exceeded their competitor's; and

Where certain brokers, induced by the coercion, persuasion, boycott, and threats of said jobbers, who had agreed that such competitor was not conducting its business in accordance with their standards and to prevent it from purchasing from manufacturers and other necessary sources of supply,

- (a) Agreed and conspired with said jobbers
  - (1) To refuse to sell to it upon the usual jobbing terms and prices;
  - (2) To recommend the same course to their principals;
  - (3) To compel it to purchase from and through them, at prices higher than regular jobbers' prices;
- (b) Refused to deliver goods ordered by it from their principal, a nationally known manufacturer, willing to sell to it, representing that it was not entitled to be dealt with as a jobber;

All for the purpose of stifling its competition:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and Ray L. Hosmer and Thomas W. Watson, copartners trading as Ray L. Hosmer & Co., hereinafter referred to as the respondents, have been



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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, McKnight-Keaton Grocery Co. and Wood & Bennett Co., are now and at all the times hereinafter mentioned were corporations organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having each its principal office in the city of Cairo in said State, and are now and for many years last past have been engaged as wholesale dealers in groceries and kindred merchandise; that the respondents Ray L. Hosmer and Thos. W. Watson are now and at all times hereinafter mentioned were copartners, trading as Ray L. Hosmer & Co., having their principal office and place of business in the city of Cairo, State of Illinois, and are now and for many years last past have been engaged as brokers and commission merchants in groceries and kindred merchandise. And the respondent, the Scuders-Gale Grocer Co., is now and at all times hereinafter mentioned was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its principal office and place of business in the city of St. Louis, in the said State, and having also a branch office in the city of Cairo, State of Illinois, and is now and for many years last past has been engaged as wholesale dealer in groceries and kindred merchandise.

PAR. 2. That each of the respondents in the conduct of its business enters into contracts of purchase for groceries and kindred merchandise from manufacturers and others in the different States and Territories of the United States and District of Columbia, causing the same to be transported to its place of business in the city of Cairo, Ill., whence such groceries and kindred merchandise are sold by respondents, and shipped to the purchasers thereof; that as a part of the transactions of which said purchases and sales are also a part, such groceries and kindred merchandise 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 groceries and kindred merchandise between and among the various States and Territories of the United States and the District of Columbia and foreign countries.

PAR. 3. That the said respondents in the conduct of their respective businesses as wholesale dealers or brokers and commission merchants in groceries and kindred merchandise in interstate commerce as aforesaid are and for more than two years last past have been wrongfully and unlawfully engaged, and are now engaged, in a combination or conspiracy among themselves, unfairly to hamper and obstruct a certain competitor, also engaged as a wholesale dealer in groceries and kindred merchandise, by inducing and compelling, or attempting to induce and compel, manufacturers of groceries and kindred merchandise to refuse to recognize such competitor as a jobber or wholesaler entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, and for that reason to refuse to sell said competitor as such in interstate commerce, thus forcing it to buy at prices higher than those made by manufacturers to wholesalers and jobbers.

PAR. 4. That each of the respondents in the conduct of its business as a wholesale dealer or broker and commission merchant in groceries and kindred merchandise in interstate commerce as aforesaid has been for more than two years last past, and is now, wrongfully and unlawfully hampering and obstructing, and attempting to hamper and obstruct, a certain competitor, also engaged as a wholesale dealer in groceries and kindred merchandise, by inducing and compelling, or attempting to induce and compel, manufacturers of groceries and kindred merchandise to refuse to recognize such competitor as a jobber or wholesaler entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, and for that reason to refuse to sell said competitor as such in interstate commerce, thus forcing it to buy at prices higher than those made by manufacturers to wholesalers and jobbers.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, McKnight-Keaton Grocery Co. and Wood & Bennett Co., are now, and at all times hereinafter mentioned were, corporations organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having each its principal office in the city of Cairo, in said State, and are now and for many years last past have been 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 grocers; that the respondents, Ray L. Hosmer and Thos. W. Watson are now, and at all times hereinafter mentioned were, copartners, trading as Ray L. Hosmer & Co., having their principal office and place of business in the city of Cairo, State of Illinois, and are now, and for many years last past have been, engaged as brokers and commission merchants in groceries and kindred merchandise; that the respondent, The Scudders-Gale Grocer Co., is now, and at all times hereinafter mentioned was, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, and having its principal office and place of business in the city of St. Louis, in the said State, and having also a branch office in the city of Cairo, State of Illinois, and is now and for many years last past has been 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 grocers; that the respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., and The Scudders-Gale Grocer Co., with the exception of the Interstate Grocery Co., hereinafter mentioned, and the New York Store Mercantile Co., comprise the entire number of dealers in said city of Cairo, State of Illinois, engaged in the business of buying and selling in wholesale quantities groceries and products such as are generally dealt in by those engaged in the business generally known as that of wholesale grocers.

PAR. 2. That each of the respondents in the conduct of its business enters into contracts of purchase for groceries and kindred merchandise from manufacturers and others in the different States and Territories of the United States and District of Columbia, causing

the same to be transported to its place of business in the city of Cairo, Ill., whence such groceries and kindred merchandise are sold by respondents and shipped to purchasers thereof; that as a part of the transactions of which said purchases and sales are also a part, such groceries and kindred merchandise 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 groceries and kindred merchandise between and among the various States and Territories of the United States and the District of Columbia and foreign countries.

PAR. 3. That the Interstate Grocery Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, and at all times herein mentioned was 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 grocers; doing a smaller amount of business than any of the aforementioned respondent wholesale grocers. That its capital stock is owned and held by retail grocers to whom it sells groceries at wholesale and at prices equal to cost plus 5 per cent to cover the cost of doing business; that it also sells to nonstockholding retailers at higher prices, but sells no groceries to consumers.

PAR. 4. That in the year 1917 each of the respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and the Interstate Grocery Co., at the same time entered into separate contracts for the purchase of certain amounts of condensed milk with a certain manufacturer's agent in the city of St. Louis, State of Missouri, and that, when in pursuance of said contract all of said milk had been shipped and had arrived at the railroad station in the city of Cairo, State of Illinois, said respondents, whose aggregate purchases of milk far exceeded the amount purchased by the Interstate Grocery Co., for the purpose of stifling and suppressing competition between them and the said Interstate Grocery Co., by means of threats to refuse to accept the condensed milk purchased by each of them, induced and compelled said manufacturer's agent to break its contract of purchase and sale with, and to withhold delivery of said condensed milk from, the said Interstate Grocery Co.

PAR. 5. That in the year 1918 the respondents, Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., who acted as brokers for, and carried in stock the products of, The Postum Cereal Co., of Battle Creek, Mich., refused to deliver certain goods ordered by the Interstate Grocery Co. from the said Postum Cereal

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Co. and which the latter was ready and willing to sell to the Interstate Grocery Co. through the said respondents, and that such refusal on the part of said respondents was accompanied by representations communicated by said respondents to the said Postum Cereal Co., to the effect that said Interstate Grocery Co. was not entitled to be treated and sold as a wholesale grocer, and such refusal was made for the purpose of retaining the good will of the other respondents and of eliminating the Interstate Grocery Co. as a competitor.

PAR. 6. That in the year 1918, the respondent, the Scudders-Gale Grocer Co., having learned that the Interstate Grocery Co. carried a stock of Kellogg's Corn Flakes, for the purpose of cutting off the Interstate Grocery Co.'s supply of that product, sent a written protest to the Kellogg Toasted Corn Flakes Co. against it selling its products to the said Interstate Grocery Co.

PAR. 7. That in the year 1918 and since that time, all of the respondents herein, with the purpose and intent of stifling, suppressing, and preventing competition in commerce between the Interstate Grocery Co. and the respondents, and with the purpose and intent of preventing the said Interstate 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 said commodities, have secretly agreed and conspired among themselves, and have had secret understandings with each other as follows:

(a) The respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., and the Scudders-Gale Grocer Co. have agreed among themselves that the said Interstate Grocery Co. was and is not conducting its business in accordance with certain tests or standards fixed and established by said respondents, and have agreed and conspired among themselves to state and represent to various manufacturers and their agents, that the Interstate 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 of manufacturers of groceries and food products, and their agents to refuse to deal with or sell to the Interstate Grocery Co. in interstate commerce upon the terms and at the prices offered and charged to its competitors, including respondents and others engaged in similar business, and to compel said company to purchase its supplies from and through respondents, all of whom are competitors of said Interstate Grocery Co.

(b) That the respondents, Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., induced by coercion,

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persuasion, boycott and threats of boycott on the part of the other respondents, have agreed and conspired with the other respondents mentioned herein, to refuse to sell to the Interstate Grocery Co. the products manufactured by their respective principals upon the terms and at the prices offered and charged to competitors of said company and to recommend to their respective principals that they should not sell to the Interstate Grocery Co. at such terms and at such prices, but agreed to compel said Interstate Grocery Co. to purchase said products from and through respondents, who are competitors of said Interstate Grocery Co., at prices higher than those charged to other competitors and others engaged in similar business.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the above-named respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., and the Scudders-Gale Grocer Co., each forever cease and desist from directly or indirectly combining and conspiring among themselves to induce, or inducing or seeking to compel or compelling manufacturers or manufacturers' agents to break any contract which they may have for the sale of to the Interstate Grocery Co.; and it is

*Further ordered,* That the respondents, McKnight-Keaton Grocery Co., Wood & Bennett Co., the Scudders-Gale Grocer Co., and Ray L. Hosmer and Thos. W. Watson, copartners, trading as Ray L. Hosmer & Co., each forever cease and desist from directly or indirectly combining and conspiring among themselves to induce, or inducing or compelling or seeking to induce or compel manufac-

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turers or manufacturers' agents to refuse to sell to the Interstate Grocery Co. at prices usually offered and charged to wholesale grocers because of its plan of organization or the method of conducting business adopted by said Interstate Grocery Co., and that the said respondents cease and desist from making oral or written statements to manufacturers, manufacturers' agents, or others to the effect that the said Interstate Grocery Co. is not entitled to purchase its supplies at prices usually offered and charged to wholesale grocers because of its plan of organization or the method of conducting business adopted by the said Interstate Grocery Co.; and it is

*Further ordered,* That each of the respondents, within 30 days from the date of service upon them, respectively, file with the Commission a written report of the manner and extent to which they have complied with the terms hereof.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

L. I. WOLPER AND H. B. WOLPER, COPARTNERS TRADING UNDER THE NAME AND STYLE OF ERRANT-KNIGHT CO., LEWIS GROCERY CO., AND IRA LESTER CO.

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

Docket 352.—October 25, 1920.

## SYLLABUS.

Where a firm engaged in the sale of groceries by mail, exclusively in combination orders to customers with no knowledge of its costs and profits, in advertising said orders

- (a) Set forth prices of the different items as "Our wholesale price," which prices for the well known staple articles were less than cost, but for the others were sufficiently in excess thereof to afford a satisfactory profit on the entire order and equaled or exceeded the usual retail prices on the order as a whole;
- (b) Overstated the retail prices ordinarily asked for the different items composing the various orders;
- (c) Advertised that for \$1 a customer could secure a "get acquainted order," as specified, "Catalogue FREE," not otherwise obtainable, offering "Bargains not available elsewhere, including sugar at 3 cents a pound, \* \* \* flour \$7 per barrel, and many others"—prices far less than wholesale cost—when in fact it sold none of those articles separately at such prices, but only in combinations as above stated, thereby deceiving customers and the public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that L. I. Wolper and H. B. Wolper, copartners, trading under the name and style of Errant-Knight Co., Lewis Grocery Co., and Ira Lester 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 pro-



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ceeding 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 since February 1, 1919, have been, operating a business in the city of Chicago, Ill.; that the business so conducted consists and has consisted of the sale in commerce among the several States and Territories of the United States and the District of Columbia, of sugar, flour, cereals, canned goods, spices, and other grocery products, in combination lots or assortments at stated prices for the several items contained in each of the said assortments, but respondents refuse to sell any of the single items in said assortments separately, at the prices quoted, but in all cases customers are required to purchase all of the items in one of the several assortments had.

PAR. 2. That said respondents in the course of their said business, make use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States, and in the District of Columbia, which said catalogues and advertisements contain certain false and misleading statements concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements are statements to the effect that respondents sell goods direct to consumer at wholesale prices; that purchasers from respondents will save at least 30 per cent on each order, after paying freight charges; that respondents by their enormous and gigantic buying power and by controlling complete outputs of large factories, are able to sell goods at prices lower than those of other dealers, whereas, the prices obtained by respondents for the goods sold in combination lots or assortments as a whole are substantially the same or greater than the prices which retail grocers generally obtain for like assortments as a whole, and respondents do not possess any advantage in buying grocery products which enable them to sell such products at prices lower than those of other dealers.

PAR. 3. That in making up the several combination lots or assortments of grocery products which are advertised and sold by respondents, they list certain staple products at prices below the current wholesale prices for such products, as in the case of sugar, which is advertised by respondents at 5 cents per pound, whereas sugar is a staple on the market and price concessions for large quantity purchases, or for any other reason, are unobtainable, and the wholesale price for same is approximately 9½ cents per pound; and flour, another staple, is advertised by respondents at \$8.36 per barrel, whereas the wholesale price for same is approximately \$12.75 per barrel, but

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when these items are included in the combination lots offered by respondents, other items in said combination are listed at prices greater than the current retail prices for same, as in the case of breakfast cocoa, spices, baking powder, canned sardines, etc., so that the sale of the combination or assortment as a whole yields to respondents a satisfactory profit, without letting the customers know that sugar and flour were being sold on any other basis than that of the other commodities.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon L. I. Wolper and H. B. Wolper, copartners, trading under the name and style of Errant-Knight Co., Lewis Grocery Co., and Ira Lester Co., hereinafter referred to as respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearances by John F. Rosen, Esq., their attorney, and filed their answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, before an examiner of the Commission theretofore duly appointed, and the respondents appeared and waived their right to introduce evidence.

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

**FINDINGS AS TO THE FACTS.**

**PARAGRAPH 1.** That L. I. Wolper and H. B. Wolper are copartners, trading under the name and style of Errant-Knight Co., Lewis Grocery Co., and Ira Lester Co., with their principal office and place of business in the city of Chicago, State of Illinois; that respondents are now and since February 1, 1919, have been engaged in the business of selling grocery products in "combination" or assortment lots throughout the States and Territories of the United States and the District of Columbia; that such grocery products are transported by respondents through parcel post, express, and other means to customers located in the various States and Territories of the United States and District of Columbia in direct competition with other persons, firms, copartnerships, and corporations.

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PAR. 2. That respondents in conducting their business, solicit the general public, customers and prospective customers, by means of representations contained in catalogues and other advertising matter, of which the Commission's exhibits 1 to 8, inclusive, are copies heretofore duly received in evidence in this proceeding and are made a part hereof, and which respondents caused to be published and circulated through the States and Territories of the United States and the District of Columbia.

PAR. 3. That during the first four months of the conduct of respondents' said business, respondents received, as a result of such representations contained in said catalogues and other advertising matter, orders for combinations or assortments of grocery products amounting to approximately \$10,000 per month; and that the various items comprising such orders were sold at specified respective prices for the various combinations or assortments as a whole; and that respondents refuse to sell separately the items of grocery products comprising such combinations or assortments so advertised and offered for sale.

PAR. 4. That the prices published in said exhibits 5, 6, and 7<sup>1</sup> under the headings "Estimated Retail Price" were at all times herein mentioned higher than prices ordinarily asked by retail dealers for similar articles of equal or better quality.

PAR. 5. That the figures, ostensible prices, published in said exhibits 5, 6, and 7, under the heading "Our Wholesale Price," have no relation whatever to the articles opposite to which they appear as prices, but are arbitrary figures selected and arranged so as to equal the price specified for each combination or assortment as a whole, which is the only price respondents intended to receive, and did receive, for the grocery products comprising each such assortment so advertised and sold; that such figures, ostensible prices, in so far as they are published and placed opposite to, or in connection with, the items sugar and flour in said exhibits 1 to 8<sup>1</sup> are less than the wholesale prices, or any prices, at which respondents during any time mentioned herein could buy sugar or flour, while figures, ostensible prices, placed opposite some other items named in such combinations or assortments are far in excess of actual prices which would afford respondents a reasonable profit on the sale of such items; that the only way in which respondents sell any of the articles so advertised is in combination with all other articles composing any given assortment or combination; and that the only figures published in any of said exhibits which represent actual or bona fide prices are the figures representing totals, and no others.

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<sup>1</sup> Not printed.

## Findings.

PAR. 6. That the column of figures, ostensible prices, as they appear in said exhibits under the often repeated heading, "Our Wholesale Price," is constructed in such a manner that if respondents actually sold such items at the figures, ostensible prices, appearing opposite thereto, respondents would be selling sugar and flour and other staples, the prices of which are well known to the public generally, at prices far below the wholesale cost of such staples, while the figures, ostensible prices, placed opposite such items, the prices of which are not well known to the public generally, are far in excess of the wholesale prices which respondents pay for such items, so that if respondents actually sold said items at the said figures, ostensible prices, appearing opposite each of said items, they would make up on the less known articles the loss which would be sustained on staples, the prices of which are well known to the public generally.

PAR. 7. That such figures, ostensible prices, as appear under said heading, "Our Wholesale Price," do not show the true price which customers and prospective customers pay for the individual items composing such combination; that if respondents eliminated entirely all such figures, ostensible prices, or substituted any other set of figures therefor, whose sum equals such total price, irrespective of how such figures would be arranged with reference to such items, customers and prospective customers would pay no more or no less for such flour, or sugar, or any other item, or all of the items named in such combination or assortment than such customers now pay respondents.

PAR. 8. That each such specified price received for said combination, or assortment, as a whole, is sufficient to yield respondents a satisfactory profit.

PAR. 9. That respondents do not possess any advantages in buying grocery products which enable them to sell such products at prices lower than other dealers.

PAR. 10. That part of respondents' plan of selling such combinations or assortments of grocery products is:

(a) To word and arrange their advertisements so as to induce prospective customers to obtain respondents' "free" catalogue by sending respondents \$1, in return for which respondents offer to and do mail an assortment of grocery products advertised as "Get Acquainted Order C22" and consisting of "1 pound pure baking powder,  $\frac{1}{4}$  pound pepper,  $\frac{1}{4}$  pound cinnamon,  $\frac{1}{2}$  pound breakfast cocoa, catalogue FREE";

## Conclusions.

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(b) To create the impression in the minds of prospective customers that such catalogue contains "bargains" in staple grocery products "not available elsewhere" by displaying in said advertisements headlines announcing "sugar 3 cents a pound" and "flour \$7 a barrel," followed by the further announcement that—

In our catalogue you will find bargains not obtainable elsewhere, including sugar at 3 cents a pound, \$3 per 100 pounds; flour \$7 per barrel; and many others. Our catalogue is sent only to people who send us a trial order. No item in this advertisement is sold separately. You must buy the entire order complete.

(c) To insert one "order" in such advertisements, which "order" includes neither sugar nor flour, but the advertisement is arranged so as to feature, and frequently repeat, the words "sugar" and "flour," so as to induce prospective customers to expect that they will be permitted to purchase sugar at 3 cents per pound and flour at \$7 per barrel from respondents, provided they first purchase respondents' "Get Acquainted Order No. C 22," and receive therewith such catalogue, as announced in said advertisements, of which said Exhibit No. 1 is a copy.

PAR. 11. That respondents sell neither sugar at 3 cents a pound nor flour at \$7 a barrel nor do they sell either of these staples or any other product named as an item in such combinations, or assortments, at any price which respondents specify in said exhibits; that the price received for any given combination as a whole is approximately the same, or greater, than the sum of the prices at which the items composing such combination, or assortment, ordinarily sell for at retail as separate items; that the price which respondents actually receive for any such item equals the cost of each item plus a portion of the gross profit on the combination or assortment, as a whole; that customers and prospective customers have no knowledge of respondents' costs and profits, and the actual price paid by such customers for any item named in said combinations, or assortments, is further hidden by the figures, ostensible prices, published under the said heading "Our Wholesale Price."

## CONCLUSIONS.

That the methods set forth in the foregoing findings of fact, under 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."

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondents, L. I. Wolper and H. B. Wolper, copartners trading under the name and style of Errant-Knight Co., Lewis Grocery Co., and Ira Lester Co., their agents, representatives, servants, and employees do cease and desist both directly and indirectly:

From circulating or causing to be circulated advertisements offering for sale commodities in combination or assortment lots, wherein figures, or ostensible prices, appear opposite to, or otherwise in connection with, the individual items of such combinations or assortments, when such figures, or ostensible prices, have no true relation to such items, but appear in such amounts as when added will equal the price at which such combinations or assortments are sold as a whole;

From constructing or arranging said ostensible prices in such manner that if the individual items were actually sold at the figures or ostensible prices appearing opposite to or otherwise in connection therewith, commodities the prices of which are well known to the public generally would be sold below cost thereof, while commodities the prices of which are not well known to the public generally would be sold sufficiently above the cost thereof to make up on the less-known articles the loss which would be sustained on commodities the prices of which are well known to the public generally;

From misrepresenting the true price at which commodities are actually sold by advertising figures purporting to be prices, which for one or more items forming a part of such combination or assortment equal the cost of such items plus a gross profit on the entire combination plus a minus difference between cost and an apparently lower price for staples or other remaining items, or item, when such staples or remaining items, or item, forming part of such scheme or device are not separately sold at the figures purporting to be prices so advertised;

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From placing opposite to, or in connection with such individual items, figures, misrepresenting prices at which said items could be purchased for from competitors; and,

From circulating any statements or representations having a tendency or capacity to falsely discredit competitors or their methods of doing business or which mislead customers, prospective customers, or the public generally as to the actual prices of commodities so offered for sale or as to the true character of the transaction advertised.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

EDWARD PERLMAN AND SAMUEL GERBER, TRADING  
UNDER THE NAME AND STYLE OF LIBERTY WHOLE-  
SALE GROCERS.

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

Docket 569.—November 1, 1920.

SYLLABUS.

Where a firm engaged in the sale of groceries by mail, exclusively in combination orders which were of comparatively small size, and so priced that each order yielded a satisfactory profit, and equaled or exceeded the sum of such prices as retailers would usually obtain for the different items composing the various assortments,

- (a) Falsely advertised that it was regularly engaged in the sale of groceries at wholesale and that purchasers from it saved from 30 per cent to 50 per cent on their purchases;
- (b) Listed certain staple products such as sugar and flour, at prices below their wholesale cost, and other items at prices greater than current retail prices, without letting purchasers know that sugar and flour were priced on a different basis from the other commodities, thereby deceiving them as to prices of all:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Edward Perlman and Samuel Gerber, copartners, trading under the name and style of Liberty Wholesale Grocers, 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 since August, 1919, have been operating a business in the city of Chicago, in the State of Illinois; that the business so conducted consists and has consisted of the manufacture and sale in commerce among the several



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States and Territories of the United States, and the District of Columbia, of sugar, flour, cereals, canned goods, spices, and other grocery products in combination lots or assortments at stated prices for the several items contained in each of said assortments, but respondent refuses to sell any of the single items in said assortments separately at the prices quoted, but in all cases customers are required to purchase all of the items in one of the several assortments had.

PAR. 2. That said respondents in the course of their said business make use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertisements contain certain false and misleading statements and representations concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements and representations are statements and representations to the effect that respondents are regularly engaged in the business of merchandizing groceries at wholesale; and that purchasers from respondents save from 30 to 50 per cent on goods purchased from them; when in truth and in fact respondents are in no sense engaged in the business of merchandizing groceries at wholesale, but sell goods direct to consuming purchasers in comparatively small combination lots, and the prices paid by respondents for the goods so sold in combination lots or assortments as a whole are substantially the same or greater than the prices which retail grocers generally obtain for like assortments as a whole.

PAR. 3. That in making up the several combination lots or assortments of grocery products which are advertised and sold by respondents, they list certain staple products at prices below the current wholesale price for such products, as in the case of sugar, which is advertised by respondents at 3 cents per pound, whereas sugar is a staple on the market, and price concessions for large-quantity purchases, or for any other reason, are unobtainable, and the wholesale price for same since August, 1919, has not been less than approximately 9½ cents per pound; and flour, another staple, is advertised by respondents at \$7.50 per barrel, whereas the wholesale price for same since August, 1919, has not been below approximately \$12.75 per barrel, but when these items are included in the combination lots offered by respondents, other items in said combinations are listed at prices greater than the current retail prices for same, as in the case of baking powder, bluing, apple jelly, etc., so that the sale of the combination or assortment as a whole yields to respondent a satisfactory

profit, without letting the purchasers know that sugar and flour were being sold on any other basis than that of the other commodities.

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

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Edward Perlman and Samuel Gerber, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer, wherein they admit that the matters and things alleged in said complaint are true in the manner and form alleged, and wherein respondents stipulate and agree that the Commission shall take said answer as the 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, and its order to cease and desist from the methods of competition complained of, disposing of this proceeding without the introduction of testimony or presentation of argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and conclusions:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents are now, and since August, 1919, have been, operating a business in the city of Chicago, in the State of Illinois; that the business so conducted consists and has consisted of the manufacture and sale in commerce among the several States and Territories of the United States and the District of Columbia of sugar, flour, cereals, canned goods, spices, and other grocery products in combination lots or assortments at stated prices for the several items contained in each of said assortments, but respondents refuse to sell any of the single items in said assortments separately at the prices quoted, but in all cases customers are required to purchase all of the items in one of the several assortments had.

PAR. 2. That said respondents, in the course of their said business, make use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertisements contain certain false and misleading statements and representations concerning respondents' said business and alleged benefits which the public might derive from trading with respondents; that among such false and misleading statements and representations

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are statements and representations to the effect that respondents are regularly engaged in the business of merchandizing groceries at wholesale; and that purchasers from respondents save from 30 to 50 per cent on goods purchased from them; when in truth and in fact respondents are in no sense engaged in the business of merchandizing groceries at wholesale but sell goods direct to consuming purchasers in comparatively small combination lots, and the prices paid to respondents for the goods so sold in combination lots or assortments as a whole are substantially the same or greater than the prices which retail grocers generally obtain for like assortments as a whole.

PAR. 3. That in making up the several combination lots or assortments of grocery products which are advertised and sold by respondents, they list certain staple products at prices below the current wholesale price for such products, as in the case of sugar, which is advertised by respondents at 3 cents per pound, whereas sugar is a staple on the market and price concessions for large quantity purchases, or for any other reason, are unobtainable, and the wholesale price for same since August, 1919, has not been less than approximately  $9\frac{1}{2}$  cents per pound; and flour, another staple, is advertised by respondents at \$7.50 per barrel, whereas the wholesale price for same since August, 1919, has not been below approximately \$12.75 per barrel, but when these items are included in the combination lots offered by respondents, other items in said combinations are listed at prices greater than the current retail prices for same, as in the case of baking powder, bluing, apple jelly, etc., so that the sale of the combination or assortment as a whole yields to respondent a satisfactory profit, without letting the purchasers know that sugar and flour were being sold on any other basis than that of the other commodities.

#### CONCLUSIONS.

The practices of said respondents, under the conditions and circumstances described in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce, and constitute a violation of 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 proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of the respondents admitting that the matters and things alleged in said complaint are true in the manner and form alleged, and agreeing

that the Commission shall take said answer as evidence in this case in lieu of testimony, and dispose of this proceeding without the introduction of testimony or the presentation of argument; and the Commission having made and filed its findings as to the facts and its conclusions that respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is ordered,* That the respondents, Edward Perlman and Samuel Gerber, their agents, representatives, servants, and employees, do cease and desist both directly and indirectly:

From circulating or causing to be circulated advertisements offering for sale commodities in combination or assortment lots, wherein figures, or ostensible prices, appear opposite to, or otherwise in connection with, the individual items of such combinations or assortments, when such figures, or ostensible prices, have no true relation to such items, but appear in such amounts as when added will equal the price at which such combinations, or assortments, are sold as a whole;

From constructing or arranging said ostensible prices in such manner that if the individual items were actually sold at the figures, or ostensible prices, appearing opposite to, or otherwise in connection therewith, commodities the prices of which are well known to the public generally would be sold below cost thereof, while commodities the prices of which are not well known to the public generally would be sold sufficiently above the cost thereof to make up on the less known articles the loss which would be sustained on commodities the prices of which are well known to the public generally;

From misrepresenting the true price at which commodities are actually sold, by advertising figures purporting to be prices, which for one or more items forming a part of such combination or assortment equal the cost of such items, plus a gross profit on the entire combination, plus a minus difference between cost and an apparently lower price for staples, or other remaining items, or item, when such staples or remaining items, or item, forming part of such combination, or assortment, are not separately sold at the figures purporting to be prices so advertised;

From placing opposite to, or in connection with such individual items, figures, misrepresenting prices at which said items could be purchased from competitors; and

From circulating any statement or representations having a tendency or capacity to falsely discredit competitors or their methods of doing business or which deceive or mislead customers, prospective

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customers, or the public generally as to the actual prices of commodities so offered for sale, or as to the true character of the transactions advertised.

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

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Complaint.

FEDERAL TRADE COMMISSION

v.

WHOLESALE GROCERS ASSOCIATION OF EL PASO,  
TEX., ET AL.

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

Docket 501—November 9, 1920.

SYLLABUS.

Where certain brokers, induced by the coercion, intimidation and threats of boycott of certain jobbers, who had secretly agreed that a competitor which dealt in groceries at retail as well as wholesale, and which had been purchasing supplies from manufacturers at regular jobbers' prices, was not entitled and should not be permitted to continue purchasing from such and other necessary wholesale sources of supply, agreed and conspired among themselves and with said jobbers, and did

- (a) Refuse to sell to it upon the usual jobbing terms and prices;
- (b) Recommend, justify, and urge the same course upon their principals;
- (c) Compel it to purchase from and through said competing jobbers at prices exceeding regular jobbers' prices;

All with the intent and effect of suppressing and preventing its competition as a jobber and causing it to lose a large volume of business:

*Held*, That such acts and practices of said jobbers and brokers, substantially as described, and each and all of them, constituted unfair methods of competition.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Wholesale Grocery Association of El Paso, Tex., F. S. Ainsa Co. (Inc.), M. Ainsa & Sons (Inc.), American Grocery Co. (Inc.), Bray & Co. (Inc.), the James A. Dick Co., the H. Lesinsky Co., Trueba-Zozaya-Seggerman (Inc.), Western Grocery Co. (Inc.), Dan T. White, and John H. Grant, doing business under the name of White-Grant Co., J. W. Lorentzen, doing business under the name of J. W. Lorentzen & Co., W. H. Constable Co. (Inc.), H. W. Taylor and H. C. Smith, doing business under the name of Taylor & Smith, John H. McMahan, doing business under the name of John McMahan & Co., W. T. Bush and the George H. Griggs Co. (Inc.), hereinafter referred to as the respondents, have been and are violating 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

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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 Standard Grocery Co. is a corporation having its principal place of business at El Paso, in the State of Texas, and also having a place of business at Deming in the State of New Mexico; 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 Standard Grocery Co. purchases commodities dealt in by it in the various States and Territories of the United States, and transports the same through other States and Territories, to the city of El Paso, in the State of Texas, where such commodities are resold 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 Standard Grocery Co., between and among the various States and Territories of the United States. That the said Standard Grocery Co. is in active competition with the respondents named in paragraph 3 hereof.

PAR. 2. That the respondent, Wholesale Grocers' Association of El Paso, Tex., is an unincorporated, voluntary association organized by the respondents enumerated in paragraph 3 hereof and of which all of the respondents enumerated in paragraph 3, are members.

PAR. 3. That the respondents, F. S. Ainsa Co. (Inc.), M. Ainsa & Sons (Inc.), American Grocery Co., Bray & Co. (Inc.), the James A. Dick Co, the H. Lesinsky Co., Trueba-Zozaya-Seggerman (Inc.), and the Western Grocery Co. (Inc), are all corporations organized and existing under the laws of the State of Texas, having their principal offices and places of business at El Paso, in said State, and are engaged in the business known generally as that of wholesale grocers; that said respondents, with purpose, intent, and effect of stifling and suppressing competition in the sale of grocery products at wholesale, have agreed, combined, and conspired together and with the respondents named in paragraphs two and four hereof and with others to prevent the said Standard 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 the agents of such manufacturers, to refuse to

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sell their products to the said Standard Grocery Co. and have threatened to withdraw their patronage from any and all manufacturers and manufacturers' agents who sell to the said Standard Grocery Co. upon the same terms and conditions usually accorded to buyers and sellers of such commodities in wholesale quantity in said district or who sell to said Standard Grocery Co. at the prices regularly charged to dealers in such commodities in said district who buy and sell in wholesale quantities; that all of the above-named respondents are members of the respondent Wholesale Grocers Association of El Paso, Tex.

PAR. 4. That the respondents, Dan T. White and John H. Grant, doing business under the name of White-Grant Co.; J. W. Lorentzen, doing business under the name of J. W. Lorentzen & Co.; W. H. Constable Co. (Inc.); H. W. Taylor and H. C. Smith, doing business under the name of Taylor & Smith; John H. McMahon, doing business under the name of John McMahon & Co.; W. T. Bush; and the George H. Briggs Co., are engaged in the business at El Paso, Tex., of selling the products of various manufacturers of groceries and food products, which said manufacturers supply the wholesale grocery trade in and about El Paso, Tex., and adjacent territory; that the said respondents, with the purpose, intent, and effect of stifling and suppressing competition in the sale of grocery products at wholesale, have agreed, combined, and conspired together and with the respondents named in paragraphs two and three hereof and with others to prevent the said Standard Grocery Co. from obtaining the 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 to prevent manufacturers and manufacturers' agents from selling to said Standard Grocery Co. upon the same terms and conditions usually accorded to buyers and sellers of such commodities in wholesale quantity in said district, or from selling to said Standard Grocery Co. at the prices regularly charged to dealers in such commodities in said district who buy and sell in wholesale quantities; that the respondents named in this paragraph have permitted the respondents named in paragraph three hereof to persuade, induce, and compel them by boycott and threats of boycott to refuse to sell the products manufactured by their respective principals to the said Standard Grocery Co., and to refuse to sell to said Standard Grocery Co. upon the same terms and conditions usually accorded to buyers and sellers of such commodities in wholesale quantity in said district; or to sell to said Standard Grocery Co. at the prices regularly charged to dealers in such commodities in said district who buy and sell in wholesale quantities.



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PAR. 5. That each of the respondents mentioned herein has been for a period of two years last past and is now wrongfully and unlawfully hampering and obstructing and attempting to hamper and obstruct the said Standard Grocery Co., by inducing and compelling and attempting to induce and compel manufacturers of grocery products and their agents to refuse to sell to said Standard Grocery Co., in interstate commerce, upon the terms and conditions and at the prices usually accorded to dealers in said district who buy and sell in wholesale quantities, and have attempted to compel said Standard Grocery Co. to pay for the commodities purchased by it prices higher than those charged to other dealers in said district who buy and sell in wholesale quantities.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Wholesale Grocers Association of El Paso, Tex.; the F. S. Ainsa Co. (Inc.); M. Ainsa & Sons (Inc.); American Grocery Co. (Inc.); Bray & Co. (Inc.); the James A. Dick Co.; the H. Lesinsky Co.; Trueba-Zozaya-Seggerman (Inc.); Western Grocery Co. (Inc.); Dan T. White and John H. Grant, doing business under the name of White-Grant Co.; J. W. Lorentzen, doing business under the name of J. W. Lorentzen & Co.; W. H. Constable Co. (Inc.); H. W. Taylor and H. C. Smith, doing business under the name of Taylor & Smith; John H. McMahon, doing business under the name of John McMahon & Co.; W. T. Bush; and Sims, Robert & Co. (Inc.), successors to the George H. Griggs Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said act.

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

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That each of the respondents, the F. S. Ainsa Co., (Inc.), M. Ainsa & Sons (Inc.), American Grocery Co. (Inc.), Bray & Co. (Inc.), James A. Dick Co., the Lesinsky Co., Trueba-Zozaya-Seggerman (Inc.), and Western Grocery Co. (Inc.), is a corporation organized and existing under the laws of the State of Texas with its principal office in the city of El Paso, Tex., and is engaged in the business of buying and selling in and among the several States of the United States, in wholesale quantities, groceries and kindred products. These respondents are hereinafter called "Respondent jobbers."

PAR. 2. Each of the respondents, Daniel T. White and John H. Grant, doing business under the name of White-Grant Co.; J. W. Lorentzen, doing business under the name of J. W. Lorentzen & Co.; H. W. Taylor and H. C. Smith, doing business under the name of Taylor & Smith; John H. McMahan, doing business under the name of John H. McMahan & Co.; and W. T. Bush is a resident of the city of El Paso, Tex., and the respondent, W. H. Constable Co. (Inc.) is a corporation organized under the laws of Texas, with its principal office in said city of El Paso, and all of the respondents in this paragraph named were and are engaged in the brokerage business of selling the products of divers manufacturers of groceries and food products, manufactured in various States of the United States, which said manufacturers sell and ship to the wholesale grocery trade in El Paso, Tex., and adjacent territory.

PAR. 3. Pursuant to an amendment of the corporate charter of the respondent the George H. Griggs Co., Sims, Robert & Co. (Inc.) is its legal successor, and is a corporation organized and existing under the laws of the State of New Mexico, with its principal office in the city of Albuquerque, in said State, and at the time of the occurrences herein set forth maintained a branch office in the city of El Paso, where it was engaged in the brokerage business of selling the products of various manufacturers of groceries and kindred products manufactured in divers States of the United States, which said manufacturers sell and ship to the wholesale grocery trade in El Paso, Tex., and adjacent territory. This respondent and the respondents named in paragraph 2 hereof are hereinafter called "Respondent brokers."

PAR. 4. The Standard Grocery Co. is a corporation that was organized in January, 1916, under the laws of the State of Texas, with a fully paid capital stock of \$50,000, with its principal office in the city of El Paso, and from said date to October 31, 1919, was engaged

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in the business of buying and selling in and among the States of Texas, New Mexico, and Arizona, and the Republic of Mexico, in wholesale quantities, groceries and kindred food products, and was a competitor of the F. S. Ainsa Co. (Inc.), Bray & Co. (Inc.), the James A. Dick Co., the H. Lesinsky Co., Trueba-Zozaya-Seggerman (Inc.), and Western Grocery Co. (Inc.), in the business of buying and selling in wholesale quantities, in the usual course of wholesale trade, groceries and food products. Said Standard Grocery Co. also owned and operated during said period and now owns and conducts six retail grocery stores in El Paso, Tex., and in a separate department of the largest of these stores, commonly known as No. 1, conducted its wholesale grocery business with storage or warehouse facilities therefor in the basement thereof and in the basements beneath several other stores, and in store No. 1 carried a stock of goods in original packages valued at \$60,000. After filing its corporate charter with the Secretary of State for New Mexico and applying for a permit to do business in that State, thereafter duly issued, and on or about September 4, 1917, said corporation opened a branch house at Deming, N. Mex. It at once there engaged exclusively in the business of buying and selling throughout the several States of the United States in wholesale quantities groceries, produce, and other food products, and so continued until on or about January 13, 1919. At or about the time the Standard Grocery Co. opened its Deming branch the respondents, American Grocery Co., James A. Dick Co., and Bray & Co., also opened branch houses at Deming, N. Mex. In the conduct of its business at Deming, N. Mex., said Standard Grocery Co. and all respondent jobbers and other concerns similarly engaged were competitors.

PAR. 5. A large number of manufacturers other than those represented by the respondent brokers sold, and until October 31, 1919, continued to sell, directly to the Standard Grocery Co., the goods and commodities manufactured by them, respectively, at the prices regularly charged to the competitors of said company and others engaged in similar business.

PAR. 5a. On or about October 31, 1919, the Tri-State Grocery Co. was incorporated under the laws of Texas by the majority stockholders of the Standard Grocery Co., and thereupon the latter company sold and transferred to the former company its wholesale grocery business, and thereafter the Standard Grocery Co. owned and operated and now owns and operates the several retail stores at El Paso, Tex., and Deming, N. Mex., hereinabove described. The creation of said Tri-State Grocery Co. and the sale to it by the Standard Grocery Co. of the latter's wholesale grocery business was

brought about by the refusal of manufacturers to sell directly to the Standard Grocery Co. as a result of the actions of the respondent jobbers and brokers hereafter described.

PAR. 6. About the month of September, 1917, the several respondents named in paragraph 1 of these findings, associated themselves together in the city of El Paso at the request of the local representative of the United States Food Administration, for the purpose of the discussion and faithful compliance with the rules and regulations promulgated by said Food Administration during the war of 1917, and having to do with conservation, profiteering, and other things concerning which rules and regulations were from time to time promulgated by said Food Administration, the War Trade Board, the price-interpreting committees, and other governmental agencies. Said respondents at their first meeting designated this voluntary and unincorporated association as the Wholesale Grocers' Association of El Paso, Tex., and elected a president, secretary, and treasurer thereof. Its officers were, respectively, C. S. Nasits, of said American Grocery Co.; Leonard M. Hanson, of James A. Dick & Co.; and E. M. Hurd, of the H. Lesinsky Co. Said association did not have a written constitution or by-laws. The meetings of said association were attended more or less regularly by the respondents named in paragraph 1 hereof, and among the discussions carried on at such meetings was the subject of sales by various manufacturers of the United States directly to wholesale and retail grocers in and about El Paso, Tex., and particularly such sales to said Standard Grocery Co. To such sales in general, and to sales to the Standard Grocery Co. in particular, objections condemning the same were voiced by the several members. Sales by the Quaker Oats Co., a manufacturer of cereal products with a national reputation, to the Standard Grocery Co. were likewise discussed and condemned. Formal minutes or records of the proceedings and actions of said association were not kept and the meetings were held informally and from time to time in the offices of the different association members. At divers meetings of said association held since its organization, and particularly during the period subsequent to the month of February, 1918, the members thereof, viz.: The F. S. Ainsa Co. (Inc.), M. Ainsa & Sons (Inc.), American Grocery Co. (Inc.), Bray & Co. (Inc.), The James A. Dick Co., The H. Lesinsky Co., Trueba-Zozaya-Seggerman (Inc.), and Western Grocery Co. (Inc.), secretly agreed among themselves that by virtue of the method of conducting its business the Standard Grocery Co. was not and is not entitled to purchase its supplies of groceries and kindred products from manufacturers and manufacturers' agents and other sources

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from which a dealer in groceries, in wholesale quantities, must obtain commodities dealt in by him, and said members secretly agreed that they should and would take such action as would prevent said Standard Grocery Co. from purchasing the commodities dealt in by it directly from the manufacturers thereof, and particularly agreed in secret amongst themselves:

(a) To represent to various manufacturers and their agents that the Standard Grocery Co. was not entitled to purchase directly from such manufacturers commodities dealt in by it;

(b) To induce, coerce, and compel by means of boycott and threats of boycott of manufacturers of groceries and other food products, and their agents, to refuse to deal with or sell to the Standard Grocery Co. upon the terms and at the prices offered and charged to competitors of said Standard Grocery Co., including the respondent jobbers and others similarly engaged, or at all, and to compel the Standard Grocery Co. to purchase its supplies from and through the respondent jobbers.

PAR. 7. Since the organization of said Wholesale Grocers' Association of El Paso, Tex., and particularly since February, 1918, in order to accomplish and effectuate the purpose and object of their said agreement, all of the members thereof, to wit, the respondents, the F. S. Ainsa Co. (Inc.), M. Ainsa & Sons (Inc.), American Grocery Co. (Inc.), Bray & Co. (Inc.), the James A. Dick Co., the H. Lesinsky Co., Trueba-Zozaya-Seggerman (Inc.), and Western Grocery Co. (Inc.), have:

(a) Represented to the respondent brokers that the Standard Grocery Co. was not entitled and should not be permitted to purchase its supplies directly from manufacturers upon terms and at the prices offered and charged to the respondent jobbers;

(b) Questioned the salesmen and agents of various manufacturers as to whether such agents were selling the products handled by them respectively to the Standard Grocery Co., and informed such agents that if they, or either of them, or their principals, sold or shipped any commodities directly to the Standard Grocery Co., one by one, the jobbers forming said Wholesale Grocers' Association of El Paso, Tex., would discontinue handling the products of the manufacturers so selling or shipping it; and all such salesmen or agents have in turn communicated such interrogatories and information to their respective principals, and urged and recommended that further sales and shipments to said Standard Grocery Co. should not be made directly but should be solicited through some of the respondent jobbers.

(c) Since July, 1918, the respondent jobbers, the F. A. Ainsa Co. (Inc.), M. Ainsa & Sons (Inc.), American Grocery Co. (Inc.), Bray & Co. (Inc.), the James A. Dick Co., the H. Lesinsky Co., and the Western Grocery Co. (Inc.), have discontinued handling some or all of the various products of a certain manufacturer of national reputation when learning from its broker, White-Grant Co., one of the respondents herein, that that manufacturer declined to discontinue making sales and shipments directly to the Standard Grocery Co.

PAR. 8. The secret understanding and agreement of the respondent jobbers set forth in paragraph 7 hereof, was made with the purpose and intent and had the effect of suppressing and preventing competition in commerce between the Standard Grocery Co. and said respondent jobbers and others similarly engaged.

PAR. 9. In or about the month of February, 1918, the respondent brokers were induced by the coercion, intimidation, and threats of boycott of their principals' products on the part of the several respondent jobbers, to agree and conspire, and they did agree and conspire, among themselves and with the respondent jobbers—

(a) To refuse to sell or solicit the sale to the Standard Grocery Co., the products manufactured by their respective principals upon the terms and at the prices offered and charged to its competitors, including the respondent jobbers, and others engaged in similar business;

(b) To recommend to their respective principals that they should not sell their commodities directly to the Standard Grocery Co. upon the terms and at the prices offered and charged to its competitors, including the respondent jobbers, and others similarly engaged; and

(c) To compel the Standard Grocery Co. to purchase its supplies from and through some of the respondent jobbers, its competitors, at prices higher than those charged to such competitors and others similarly engaged.

PAR. 10. Since the month of February, 1918, in order to accomplish and effectuate the purpose and object of their said agreement, said respondent brokers have—

(a) Represented to their respective principals that the Standard Grocery Co. was not entitled and should not be permitted to purchase its manufactured products directly and upon terms and at prices offered and charged to the competitors of the Standard Grocery Co., including the respondent jobbers;

(b) Represented to their respective principals that if the Standard Grocery Co. was permitted to purchase its supplies directly from manufacturers, upon terms and at prices offered and charged

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to competitors of the Standard Grocery Co., including the respondent jobbers, said respondent jobbers would discontinue handling their products;

(c) Made representations to a certain manufacturer, principal of one of the respondent brokers, that said respondent jobbers were not placing as large orders for its products as theretofore because of sales made by that manufacturer directly to the Standard Grocery Co.

(d) Since the month of February, 1918, at the instigation of respondent jobbers, refused to sell to the Standard 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 Standard Grocery Co. should not be permitted to purchase directly from said principals upon the terms and at the prices offered and charged to its competitors, including respondent jobbers, and others engaged in similar business.

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

(f) During the period of July, 1918, to April, 1919, the respondents Daniel T. White and John H. Grant, doing business under the name of White-Grant Co., sent divers letters to their principals, the Quaker Oats Co., in which, among other things, it was stated that:

We advised you that jobbers at El Paso had taken up this matter [sales to Standard Grocery Co.]. \* \* \* At the present time we are unable to book our jobbers up for further business, and we don't know how long this condition will last, but for the present we know that the jobbers here are not going to take the same interest in Quaker Oats that they have in the past. \* \* \* If we could assure the jobbing trade here of distribution of goods through them, we feel that we could get practically all of them to get in line with us, but with selling the Standard people, the question is whether we get any support from the jobbers other than that which they necessarily have to give.

Dick Co., as you know, canceled their order on account of your selling the Standard Grocery Co., and we are having the dickens of a time with the other two here; likewise it is impossible just at this time to get others to come in line.

We must say to you with complete knowledge that if the Standard Grocery Co. business had not come up, we would have shown an increase of 50 to 75

per cent. Bray & Co. would have had at least 4 or 5 cars booked with us, and we would have had practically every jobber in El Paso with us.

The jobbers here are, we might say, entirely out of your goods—that is to say, Bray probably has 10 or 15 cases of Quaker Oats (nothing else) and Lesinsky probably a couple hundred cases of Quaker Oats and nothing else, and we are at a deadlock with the jobbers, as they do not want to place orders upon Quaker Oats under present existing conditions.

El Paso, unfortunately, is not a large enough market to work the game like it is at present. We have talked the matter over very fully with the two parties most interested in Quaker Oats, namely, Lesinsky and Bray, and there is no question but what they want to place orders on the line, but we can not get them to come through at this time as they are waiting for a final decision from you. Lesinsky or Bray would be willing to handle Standard Grocery business on a very close margin.

The two jobbers above mentioned have been holding off buying some other lines of goods, hoping that an adjustment would be made so that they could come back in the Quaker Oats fold, and if we do not get the matter straightened out before long the outlook for the Quaker line is not very good here.

(g) In the month of November, 1918, representatives of the respondent brokers W. H. Constable Co. (Inc.) and White-Grant Co. proceeded from El Paso, Tex., to San Francisco, Calif., and there interviewed officers of the California Packing Corporation regarding sales through its El Paso representatives, John H. McMahon & Co., one of the respondent brokers, to the Standard Grocery Co., and sought the discontinuance of such sales.

(h) Thereafter and on or about December 12, 1918, said White-Grant Co. sent a letter to its principal, the Quaker Oats Co., in which, among other things, it said:

We would like for you to make a comparison of your records on El Paso business for the last four months of 1917 and 1918, which we believe will get you some evidence that will be convincing. We are absolutely getting no support from the jobbers here and they have agreed among themselves to withhold any support as long as present conditions continue.

With the elimination of this disturbing element we can get the full cooperation, we believe, of practically every jobber in El Paso, which would mean we should sell from 15 to 20 cars of goods per year, probably more.

The California Packing Corporation has been selling these people for the past two years, but did not understand the condition here and they have advised us that the Standard Grocery Co. will be advised between now and January 1 that they can not buy direct from them. This is only one of the concerns that are withdrawing direct business with the Standard Grocery Co.

You wrote us some time ago relative to corn flakes. At present it is absolutely impossible for us to interest anyone here on this item, but if we can assure our friends and jobbers here of your cooperation we can do some corn-flake business, probably more than you have done with the Standard Grocery Co.

(i) The respondent, W. H. Constable (Inc.), through its manager, sent a telegram to the United States Food Administrator at San



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Francisco on April 9, 1919, in response to an inquiry concerning an order for sugar given by the Standard Grocery Co. to an Albuquerque (N. Mex.) brokerage house, in which, among other things, it said:

My firm would not think of selling the Standard Grocery Co. direct, and although they are large distributors we do not consider it advisable for you to sell them.

(j) The respondent, Sims, Robert & Co. (Ins.), legal successor to the George H. Griggs Co., sent the following telegram on May 6, 1918, to its principal, the Southern Cotton Oil Trading Co.:

Have thoroughly covered situation to-day with jobbers. Have about 1,200 cases old style Snowdrift. To move it, is imperative that Standard Grocery here and at Deming be cut off immediately. Jobbers demand this action for their support. Bitter fight being waged on manufacturers now selling Standard who surely are not entitled to buy direct. They will hardly get Crustene. Dick & Co. rather controls this. \* \* \* Wire quick authority cut off Standard so we can advise jobbers it has been done. \* \* \*

PAR. 11. The agreement and conspiracy of the respondent brokers hereinabove set forth was made with the purpose and intent and had the effect of—

(a) Suppressing and preventing competition in commerce between the Standard Grocery Co. and the respondent jobbers and others engaged in similar business;

(b) Causing numerous manufacturers of products dealt in by the Standard Grocery Co. who sold and shipped directly to said company, as hereinabove set forth, to refuse to sell said company on the terms and at the prices theretofore extended to it, or at all;

(c) Compelling Standard Grocery Co. on numerous occasions subsequent to the month of February, 1918, to purchase from its competitors, the respondent jobbers, large quantities of the products dealt in by it in the course of its business and to pay therefor higher prices than those regularly charged by manufacturers to its said competitors;

(d) Causing Standard Grocery Co. to lose to its competitors, the respondent jobbers, a large volume of business with a resulting financial loss to it.

PAR. 12. The decisions and actions of the respondent brokers with respect to the Standard Grocery Co. and their refusal to sell said company at the prices regularly charged to its competitors have been influenced by the loss of patronage or the fear of loss of patronage, and because of the influence, coercion, and constraint of said respondent jobbers.

## CONCLUSIONS.

The acts, agreements, understandings, policies, and practices of the respondent jobbers and the respondent brokers, and each and all of them, are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

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

PARAGRAPH 1. *It is, therefore, now ordered,* That the respondents, F. S. Ainsa Co. (Inc.); M. Ainsa & Sons (Inc.); American Grocery Co. (Inc.); Bray & Co. (Inc.); The James A. Dick Co.; the H. Lesinsky Co.; Trueba-Zozaya-Seggerman (Inc.); Western Grocery Co. (Inc.); Dan T. White and John H. Grant, doing business under the name of White-Grant Co.; J. W. Lorentzen, doing business under the name of J. W. Lorentzen & Co.; H. W. Taylor and H. C. Smith, doing business under the name of Taylor & Smith; John H. McMahon, doing business under the name of John McMahon & Co.; W. T. Bush; W. H. Constable Co. (Inc.); and Sims, Robert & Co. (Inc.), legal successor to the George H. Griggs Co., and each of them and their officers and agents, forever cease and desist from directly or indirectly—

(a) Combining and conspiring among themselves to induce, coerce, and compel manufacturers, or manufacturers' agents to refuse to sell to the Standard Grocery Co., or to refuse to sell to said Standard Grocery Co. upon the terms and at the prices offered at and charged to competitors of said company, or to refuse to sell to others engaged in similar business;

(b) 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 Standard Grocery Co. or others engaged in similar business, upon terms agreed upon between such manufacturers, or their agents, and said company, and others;

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(c) Combining and conspiring among themselves, or with others, or using any scheme or device whatsoever, to hinder, obstruct, and prevent the Standard Grocery Co. or others engaged in similar business, 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, F. S. Ainsa Co. (Inc.), M. Ainsa & Sons (Inc.), Bray & Co. (Inc.), the James A. Dick Co., the H. Lesinsky Co., American Grocery Co. (Inc.), Trueba-Zozaya-Seggerman (Inc.), and Western Grocery Co. (Inc.), or others engaged in similar business;

(d) Hindering, obstructing, or preventing any manufacturer or manufacturer's agent from selling and shipping in interstate commerce to the Standard Grocery Co. or others engaged in similar business;

(e) 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 Standard Grocery Co. or others engaged in similar business, upon any terms agreed upon by such manufacturers, or their agents, and said company and others;

(f) Combining or conspiring among themselves, or with others, to compel, or attempt to compel, the Standard Grocery Co. or others engaged in similar business, to purchase the products and commodities required for its business from or through any competitor of said company, or others similarly engaged.

PAR. 2. *It is further ordered*, That the respondents, F. S. Ainsa Co. (Inc.), M. Ainsa & Sons (Inc.), American Grocery Co. (Inc.), Bray & Co. (Inc.), the James A. Dick Co., the H. Lesinsky Co., Trueba-Zozaya-Seggerman (Inc.), and Western Grocery Co. (Inc.), and their officers and agents, forever cease and desist from—

(a) Combining and conspiring among themselves, or with others, 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 Standard Grocery Co., or others engaged in similar business, at prices regularly charged competitors of said company or others engaged in similar business.

PAR. 3. *It is further ordered*, That the respondents, Dan T. White and John H. Grant, doing business under the name of White-Grant Co.; J. W. Lorentzen, doing business under the name of J. W. Lorentzen & Co.; H. W. Taylor and H. C. Smith, doing business under the name of Taylor & Smith; John H. McMahon, doing business un-

der the name of John McMahon & Co.; W. T. Bush; Sims, Robert & Co. (Inc.), legal successor to the George H. Griggs Co.; and W. H. Constable Co. (Inc.), and their officers and agents, forever cease and desist from—

(a) Combining and conspiring among themselves or with the other respondents herein, or with others, to hinder, obstruct, or prevent the Standard Grocery Co. or others engaged in similar business, 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 said Standard Grocery Co. or others engaged in similar business.

## FEDERAL TRADE COMMISSION.

v.

## THE AEOLIAN COMPANY.

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

Docket 268—November 23, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of organs, player pianos, music rolls, phonographs, records, and other accessories,

- (a) Fixed prices at which its products should be resold, making written agreements with dealers handling its phonographs and records, and furnishing dealers handling its player pianos with rules governing their resale at prices fixed by it from time to time;
- (b) Made it a condition of such written agreements that if the dealer should handle competing commodities, then such dealer would advertise and sell its phonographs and any parts and accessories thereof, and records "as its best and unqualified leader" :

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that The Aeolian 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 Aeolian 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 New York, having its principal office and place of business located in the city and State of New York and for more than two years last past engaged in the business of manufacturing and selling pipe organs and perforated music rolls, musical instruments of the phonograph type, known as "Aeolian-Vocalion," and parts and accessories thereto and phonograph records, throughout the 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 course of its said business the respondent, The Aeolian Co., has adopted and maintains a system of fixing prices at which its product shall be resold by dealers, with the effect of securing the trade of dealers, and of enlisting their active cooperation in enlarging the sale of its price-maintained product, to the prejudice of competitors who do not fix and require the maintenance of resale prices of their product, and with the effect of eliminating competition in price among dealers in this product, and thereby depriving dealers of their right to sell such product at such prices as they may deem adequate and warranted by their selling efficiency; and that for the purpose of maintaining said standard resale price and of inducing and compelling its customers to maintain and keep such standard prices respondent has for more than two years last past refused, and is still refusing, to sell its product to customers or dealers who will not agree to maintain such specified standard resale prices or who do not sell such product at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

PAR. 3. That said respondent has inaugurated and maintains a system of requiring dealers who purchase from respondent for resale musical instruments of the phonograph type and parts and accessories thereto, and phonograph records, to agree that if such dealers handle, deal in, or sell any other type or make of phonograph instruments, phonograph records, or talking machines, or parts or accessories thereto, than those so purchased from respondent, then such dealers will directly and indirectly advertise, market, promote, and sell the instruments, parts, and accessories so purchased from respondent as the best and unqualified leaders of any and all goods of the phonograph type.

PAR. 4. That said respondent has refused to sell Aeolian pipe-organ music rolls manufactured by it except to purchasers of pipe organs manufactured by respondent, and has prohibited dealers who sell Aeolian instruments, parts, and accessories from selling such rolls to any one other than the purchaser of an Aeolian pipe organ for use on such organ, although it is possible and practicable to use such rolls on pipe organs other than those manufactured and sold by respondent.

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

The Federal Trade Commission having served its complaint herein wherein it alleged that it had reason to believe that the above-named respondent, The Aeolian 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 of such alleged violations 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 D. Beattys, Esq., its attorney, and having duly filed its answer admitting certain allegations of the complaint and denying certain others, and the attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken and considered by the Commission in lieu of testimony, and with the same force and effect as if testified to upon a hearing regularly had in this proceeding, and that the Commission should forthwith proceed upon said statement of facts to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding; 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 its conclusions, as follows:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Aeolian Co., is now and was at all the times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, and having its principal office and place of business located in the city and State of New York, and for more than three years last past has been and still is engaged in the business of manufacturing, selling, and shipping player pianos, pipe organs, and perforated music rolls, phonographs known as "Aeolian-Vocalions," parts thereof and accessories thereto, and phonograph records throughout the various States and Territories of the United States and the District of Columbia, in direct competition with other individuals, firms, and corporations similarly engaged.

PAR. 2. That within a period of more than three years last past respondent made a practice in its said business in the course of interstate commerce, as aforesaid, of fixing and establishing certain specified standard prices at which its various products enumerated above

should be resold by dealers generally throughout the United States who purchased the same from respondent.

PAR. 3. That in the case of dealers handling respondent's phonographs and phonograph records a regular printed form of agreement, designated as Aeolian-Vocalion Dealer's Agreement, was generally executed by and between respondent and each of the dealers designated as respondent's agents in various localities throughout the United States. For a number of years these agreements were in force between respondent and most of the dealers handling phonographs and phonograph records manufactured and sold by respondent.

PAR. 4. That these dealers' agreements contained the following provisions relating to the resale prices to be observed by such dealers in the sale of phonographs, parts, and accessories, and phonograph records purchased by them from the respondent:

In consideration of the limited number of and restricted class of said first party's [respondent's] representatives and of their careful selection by said first party with a view of securing high-class trade, said second party [dealer] shall sell said Aeolian-Vocalion instruments and all parts and accessories and Aeolian-Vocalion records at retail only, and for the prices fixed from time to time by said first party and set forth on the accompanying schedule of prices and on such schedules as may be issued from time to time. \* \* \* Said second party further expressly agrees that he will not in any event during the continuance of this agreement sell records at second-hand or reduced prices or at any prices less than those fixed by said first party from time to time.

PAR. 5. That from time to time respondent furnished to all of the dealers handling said phonographs and phonograph records retail price lists, in accordance with which the said dealers agreed to and did resell said goods to the public, and said resale prices were almost universally observed and adhered to by the dealers handling said phonographs and records throughout the United States.

PAR. 6. That except in a few instances written contracts were not entered into between respondent and dealers handling the player pianos manufactured by respondent, but, within the period aforesaid, respondent made a practice in the course of interstate commerce of supplying such dealers with a set of rules governing the resale of such player pianos and including provisions for the adherence by such dealers to resale prices fixed and established from time to time by respondent.

PAR. 7. That in all of said dealers' agreements above mentioned it was provided that the same could be terminated at any time by either party by giving written notice to the other, and respondent avers that in or about the month of June, 1918, all of its then outstanding dealers' agreements were terminated and canceled by it and new agreements issued and substituted therefor from which said\*



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provisions providing for the maintenance of resale prices by said dealers respectively were eliminated, and that no written agreements containing the same or similar provisions have since been entered into by respondent.

PAR. 8. That all of said dealers' agreements heretofore entered into between respondent and dealers handling its phonographs and phonograph records contained, and the agreements substituted for those previously in force, as well as new agreements entered into since June, 1918, and now in force, still contain the following provisions:

Said second party [dealer] agrees that if it handles, deals in, or sells any other type or make of phonograph instruments, phonograph records, or talking machines than those of said first party's [respondent] make hereinbefore referred to, or parts and accessories of the same, it and its representatives will, directly and indirectly advertise, market, promote, and sell said Aeolian-Vocallon instruments of said first party, and any parts and accessories thereof, and records, as its best and unqualified leader of any and all goods of the phonograph type.

#### CONCLUSIONS.

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

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, The Aeolian 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 of such alleged violations 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 B. Beattys, Esq., its attorney, and having duly filed its answer admitting certain allegations of the complaint and denying certain others, and the attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken and considered by the Commission in lieu of testimony, and with the same force and effect

as if testified to upon a hearing regularly had in this proceeding, and that the Commission should forthwith proceed upon said statement of facts to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding; and the Commission, on the date hereof, having made and filed its report containing these 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 Aeolian Co., its officers, directors, and agents cease and desist from:

(1) Requiring purchasers of respondent's player pianos, phonographs, parts and accessories thereof, and phonograph records to enter into any contracts or agreements to resell said articles, or any of them, at prices fixed or established, or to be fixed or established, by respondent;

(2) Issuing rules or directions requiring dealers to adhere to resale prices fixed or established by respondent;

(3) Entering into any contracts or enforcing any contracts previously entered into whereby dealers in respondent's phonographs and records are or have been required to advertise and sell the same as such dealers' best and unqualified leader of any and all goods of the phonograph type.

*And it is further ordered*, That the charges contained in paragraph 4 of the complaint herein be and the same hereby are dismissed, without prejudice.

*And it is further ordered*, That said respondent, The Aeolian 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.

Complaint.

3 F. T. C.

## FEDERAL TRADE COMMISSION

v.

A. E. LIND, DOING BUSINESS UNDER THE ASSUMED  
NAME AND STYLE OF UNITED STATES SALVAGE CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5  
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 593—November 29, 1920.

## SYLLABUS.

Where an individual dealing in paints,

- (a) Under the name of "United States Salvage Co," falsely and deceptively advertised his paints as "Army and Navy Brand," "Army and Navy paints, 100% pure \* \* \*"; the Government wants you to paint"; and
- (b) Under the name of "Army and Navy Paint Co." falsely and deceptively advertised his paints as "Our brand of Army and Navy paint";

With a tendency to deceive and mislead the public into the belief that the paints so offered had been made for the Government according to its specifications and purchased by him as surplus stock:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that A. E. Lind, doing business under the assumed name and style of United States Salvage 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, A. E. Lind, under the assumed name and style of United States Salvage Co., is now and for more than one year last past has been engaged in the business of buying and selling paints, varnishes, roofing cement, and kindred products throughout the several States and Territories of the United States, with his principal office and place of business in the city of Cleveland, State of Ohio, and during all times herein mentioned has been

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## Findings.

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

PAR. 2. That during the year 1919 the respondent selected the name "United States Salvage Co." as one under which to transact his said business, and that he has ever since conducted his said business under said assumed name of "United States Salvage Co.;" that in carrying on his said business the respondent, under said assumed name and style of United States Salvage Co., has caused to be inserted in various newspapers, magazines, pamphlets, and periodicals published and circulated in and among the several States and Territories of the United States and the District of Columbia the following advertisement, to wit:

## Sale of ARMY AND NAVY PAINTS.

\$2 per gallon.

Suitable for house painting.

30 gallons allotted to each person.

2,000 gallons battleship gray.

1,500 gallons camouflage green.

500 gallons camouflage yellow.

800 gallons brown.

500 gallons olive drab.

300 gallons cream.

400 gallons camouflage blue.

600 gallons aeroplane varnish.

750 gallons submarine black.

\$1.50 per gallon.

1,200 gallons roofing cement. Keeps your roof from leaking, \$1 per gallon.

The above paints are 100 per cent pure and the Government wants you to paint and now is your chance. This sale is for cash, 20 per cent to accompany order, balance C. O. D., subject to prior sale; f. o. b. Cleveland, Ohio.

UNITED STATES SALVAGE CO.

2837 Carnegie Ave., Cleveland, Ohio.

9-9-7t.

That the respondent did not and does not sell or have for sale any paint, varnish, roofing cement, or like product manufactured for the use of the United States Government or sold by the United States Government to respondent as surplus stock.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, A. E. Lind, doing business under the assumed name and style of "United States Salvage Co.," charging

## Findings.

S F. T. C.

him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent, having entered his appearance in person, and filed his answer herein, a hearing was had before Frank B. Lent, an examiner of the Federal Trade Commission, theretofore duly appointed, at which hearing respondent appeared in person, and by J. B. Waterworth, Esq., his attorney, and agreed to execute, and did execute and file herein an agreed statement of facts, the same to be in lieu of testimony and to be taken as the evidence in this cause.

And thereupon, the respondent, having by such agreed statement of facts waived all argument before the Commission, and the privilege of filing a written brief herein, and having agreed that the Commission should forthwith and thereupon enter its report stating its findings as to the facts and its conclusion, and make its order disposing of this proceeding, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusions:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. A. E. Lind, the above-named respondent, commenced the business of buying and selling paints in the city of Cleveland, Ohio, on or about September, 1919. On or about the said time he made an agreement with the Postal Paint & Color Co., of said city, whereby said company would furnish him paints as ordered and send them to the purchasers in various parts of the United States for him, the said Lind. The said Lind, on or about the same time, adopted as his business name the name "United States Salvage Co.," which name he used continuously until about January, 1920.

PAR. 2. Under said name, "United States Salvage Co.," said Lind caused to be inserted in divers newspapers in certain of the States of the United States, and particularly in the States of Indiana, West Virginia, Ohio, and Virginia, advertisements, each of which was in words and figures as follows:

## Sale of ARMY and NAVY PAINTS.

\$2 per gallon.

Suitable for house painting.

30 gallons allotted to each person.

2,000 gallons battleship grey.

1,500 gallons camouflage green.

500 gallons camouflage yellow.

800 gallons brown.

500 gallons olive drab.

300 gallons cream.

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## Findings.

400 gallons camouflage blue.  
 600 gallons aeroplane varnish.  
 750 gallons submarine black.  
 \$1.50 per gallon.

1,200 gallons roofing cement. Keeps your roof from leaking; \$1.00 per gallon.

The above paints are 100 per cent pure and the Government want you to paint, and now is your chance. This sale is for cash, 20 per cent to accompany any order, balance C. O. D., subject to prior sale; f. o. b. Cleveland, Ohio.

UNITED STATES SALVAGE CO.,

2837 Carnegie Ave., Cleveland, Ohio.

9-9-7t.

Said advertisements were placed in the said newspapers at the instance of the said respondent on or about the month of September, 1919. Said respondent realized shortly after the advertisements appeared that the same were misleading, and gave orders to the newspapers publishing the same to discontinue such publication. Nevertheless, said advertisements appeared in said newspapers at least once in every instance and in the case of some newspapers several times.

PAR. 3. Said respondent received divers orders for such paint in answer to the said advertisements from persons residing in certain of the States of the United States, and particularly in the States of Indiana, West Virginia, Virginia, and Ohio; and during said period, to wit, between September, 1919, and January, 1920, the said Lind, under the said name of "United States Salvage Co.," sold and delivered to the several parties aforesaid in the said several States of the United States approximately 2,500 gallons of such paint so advertised, all of said paint being sold to the said purchasers by reason of and in response to the advertisements aforesaid.

PAR. 4. Said paint so advertised and sold during the said period as aforesaid, was not manufactured by the respondent, or by any other person or parties, for the United States Government, or the United States Army or Navy; nor was such paint sold by the United States Government, or the United States Army or Navy, to the respondent, or to any other person or party, as surplus Government stock or otherwise. Said advertisements were misleading and tended to deceive and mislead the public into the belief that the paint so offered for sale was surplus Government paint, made for the use of the United States Government and according to its specifications, duly purchased from the United States Government by the respondent, whereas said paint had never been manufactured for the use of the United States Army or the United States Navy.

PAR. 5. Respondent in response to every order received by him for such paint in response to said advertisements, sent to the prospective

## Findings.

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purchaser an acknowledgment blank, which contained the following heading:

UNITED STATES SALVAGE Co.,  
2837 Carnegie Avenue, Cleveland, Ohio.  
DISTRIBUTORS of ARMY PAINTS, SHIPBUILDING PAINTS, NAVY  
PAINTS, Cantonment Roofing Cement.

Said blank contains the following notice:

DEAR SIR: We acknowledge receipt of your order for our brand of "Army and Navy" paint, and before shipping same beg to advise that our advertisement was not explicit.

We want you to know that this paint is only put up in barrels, half barrels, and wood kits, also that this is our special brand sold with the understanding that you have 10 days for examination or money refunded on return of goods if not satisfactory.

Please sign this acknowledgment and return and your goods will go forward at once.

UNITED STATES SALVAGE Co.,  
2837 Carnegie Avenue, Cleveland, Ohio.

Name.....  
Town.....  
State.....

Respondent used said acknowledgment blank because he realized that the said advertisements were misleading and improper, and several of the prospective purchasers returned such acknowledgment blanks with request that their orders be canceled and their money refunded, and respondent did refund such money when so requested.

PAR. 6. Said respondent during the period between September, 1919, and January, 1920, sent by mail to divers persons in several of the States of the United States a circular containing advertising matter in regard to the paints sold by respondent, on the first and outside page of which circular appeared in large letters the following words: "Army and Navy brand. United States Salvage Co., Cleveland, Ohio."

PAR. 7. During the period between January, 1920, and April, 1920, said Lind sold no paint under any name whatsoever; and from on or about April, 1920, until July 21, 1920, said Lind was engaged under the name of "Army & Navy Paint Co.," 7525 Broadway, Cleveland, Ohio, in the sale and offering for sale of paints to divers persons in several of the States of the United States. Said Lind caused to be printed in divers newspapers in several of the States of the United States advertisements for the purpose of furthering the sale of such paint, in which advertisement he referred to such paints as "Our brand of Army and Navy paint." The use of such business or trade name, to wit, "Army & Navy Paint Co.," and the advertisements of the paint sold by respondent under such name as "Army

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## Order.

and Navy paint" was misleading and tended to deceive and mislead the public into the belief that the paint sold by respondent was paint manufactured for the use of the United States Army or Navy, or sold by the United States Army or Navy, to respondent as surplus Government stock, or otherwise.

PAR. 8. Respondent, on July 21, 1920, after the service upon him of the complaint issued in this cause, and upon the day set for the taking of testimony therein, waived the taking of testimony and offered to discontinue the use of the aforesaid name, to wit, "United States Salvage Co.," and the aforesaid name, to wit, "Army & Navy Paint Co.," and to refrain from using any other name which would indicate or suggest to the public that respondent was connected with the United States Army or Navy, or was selling paints manufactured for the use of the United States Army or Navy, or sold by the United States Army or Navy to respondent as surplus stock, or otherwise.

## CONCLUSIONS.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." The conduct of the respondent in the course of his business affords sufficient ground for the issue of an order to prevent the continuance of the practice found to be unfair.

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the evidence in the case, the same being contained in an agreed statement of facts duly filed herein, and the Commission having made its findings as to the facts with its conclusions that the respondent has violated the provisions of the act of Congress, approved Sept. 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That the respondent, A. E. Lind, doing business under the assumed name and style of United States Salvage Co., do cease and desist:

(1) From using as a business or trade name the words "United States Salvage Co.," or the words "Army & Navy Paint Co.," in connection with the sale or offering for sale of paints not manufactured for the use of the United States Government, or sold by the United



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States Government to respondent, or any other, as surplus stock or otherwise; and

(2) From advertising under and by means of the aforesaid business or trade names the sale of any paints not manufactured for the use of the United States Government or sold by the United States Government to respondent, or any other, as surplus stock or otherwise; and

(3) From selling or offering or advertising for sale under the trade name "United States Salvage Co." or "Army & Navy Paint Co." any paint or varnish represented in terms or by trade name, directly or indirectly, to be or to have been manufactured for the United States Government or any of its agencies and sold to or by it or them, if the said representation is not true in fact.

*And it is further ordered,* That said respondent, A. E. Lind, doing business under the assumed name and style of United States Salvage 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.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## CHAMPION BLOWER &amp; FORGE COMPANY.

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

Docket 513.—November 30, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of blowers, forges, and drills,

- (a) Circulated and displayed in its catalogues cuts of certain unpatented machines in its "400" line of blowers and forges, with statements that the machines were patented, and a list of numbers of certain expired patents; thereby tending to mislead and deceive the public into believing that the machines were still protected by patents;
- (b) Falsely wrote a wholesaler that said line was fully protected by patents, stating that it had secured a verdict against a competitor for infringement; thereby inducing him to cease buying said competitor's forges and drills; and
- (c) Falsely stated to another wholesaler, and thereby misled him to believe that all its products and particularly its "400" line of blowers and forges and "200" line of drills were covered by patents, which he would infringe by dealing in said competitor's corresponding products:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Champion Blower & Forge 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 Champion Blower & Forge Co. is now, and, at all times hereinafter mentioned was, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of manufacture in the city of Lancaster, in said State, and is now and for more than

## Findings.

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a year last past has been engaged in the manufacture and sale of blowers, forges, drills, and other like machinery, and in the shipment thereof from the city of Lancaster, in the State of Pennsylvania, to purchasers in other States of the United States, in direct competition with other individuals, copartnerships and corporations similarly engaged.

PAR. 2. That the respondent, its officers, agents, servants, and employees, in connection with the manufacture and sale of blowers, forges, drills, and other like machinery, in interstate commerce as aforesaid, for more than a year last past have threatened and are threatening to institute, against customers of its competitors, suits for alleged infringements of patents of the respondent; that said threats of litigation, on account of such alleged infringement of patents, are couched in vague, indefinite, and general terms, and are not made in good faith, but are made with the intent, purpose, and effect of intimidating customers of competitors, so that said customers will cease to purchase competitors' goods, and that the effect of such threats and intimidations, made in bad faith as aforesaid, has been and is to embarrass said competitors.

PAR. 3. That the respondent, in the manufacture and sale of blowers, forges, drills, and other like machinery, in interstate commerce as aforesaid, for more than a year last past has caused the word "Patented" to be imprinted upon its said products, and statements to that effect, together with a list of numbers of United States patents purporting to cover said products of respondents, to be printed in its catalogues in connection with the illustration and description of its products, for the purpose, and with the effect of causing the purchasing public to believe that said products are covered by letters patent of the United States, owned and controlled by the respondent, whereas, in truth and fact, said patents have long since expired and have no legal force or effect.

**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, Champion Blower & Forge Co., had been and then was 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 respondent having entered its appearance by attorneys, and having duly filed its answer, admitting certain of the allegations of the said complaint, and denying certain others thereof; and thereafter testimony having been taken before B. L. Shinn, an examiner for the Federal Trade Commission, in New York, N. Y., on April 22, 1920; and thereafter the attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said agreed statement of facts, together with the testimony taken at the said hearing before the said examiner, should be taken as the evidence in this case and in lieu of further testimony, and that the Commission should forthwith proceed upon such agreed statement of facts and the record of said hearing, to make and enter its report, stating its findings as to the facts and its conclusion, and an order disposing of the proceeding; and the Commission having duly considered the same and being fully advised in the premises, makes this its report and findings of facts and conclusions:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent is now, and at all times hereinafter mentioned has been, a corporation, organized and existing under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of manufacture in the city of Lancaster, in said State; and respondent is now, and at all times hereinafter mentioned has been, engaged in the manufacture and sale of blowers, forges, drills, and similar machinery, and in the shipment thereof from Lancaster, Pa., to the purchasers thereof in other States of the United States; that respondent has been and is in direct competition with other individuals, copartnerships, and corporations similarly engaged, and particularly in direct competition with the Buffalo Forge Co., of Buffalo, N. Y., said Buffalo Forge Co. being also engaged in the manufacture of similar machinery, and in the shipment and sale thereof in interstate commerce.

PAR. 2. That some of the machines so manufactured and sold by the respondent as aforesaid, had become known to the trade and purchasing public as the respondent's "400" line of blowers and forges, and others as respondent's "200" line of drills; that the said Buffalo Forge Co. manufactures and sells a line of blowers and forges similar to the No. "400" line of blowers and forges so manufactured and sold by respondent as aforesaid, and that said Buffalo Forge Co. manufactures and sells a line of drills similar to the No. "200" line of drills so manufactured and sold by respondent as aforesaid.

## Findings.

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PAR. 3. That respondent has been and still is the owner of certain patents, under which it has been operating in the manufacture and sale of the machines aforesaid; that among such patents, which pertain to the "400" line of blowers and forges, are a number which have expired, to-wit, patents numbered 676322, 676323, and 676324, dated June 11, 1901, and No. 697629, dated April 15, 1902, and design patents, Nos. 34880, 34881, 34882, 34883, 34884, and 34885, dated July 30, 1901; that among such patents, under which respondent has been operating in the manufacture and sale of its "400" line of blowers and forges, as aforesaid, are a number which have not expired, namely, No. 804860, dated November 21, 1905; No. 869247, dated October 29, 1907; No. 874893, dated December 24, 1907; and No. 1221187, dated April 3, 1917; that such patents now subsisting do not cover several of the machines in the "400" line of blowers and forges aforesaid, and several of such "400" blowers and forges are not covered nor affected in any manner whatsoever by any valid subsisting patent.

PAR. 4. That respondent issued a printed catalogue during the years 1918 and 1919, which catalogue was called its "1918 catalogue"; that said catalogue was distributed to respondent's customers and prospective customers and the purchasing public generally; that said catalogue contained cuts or pictures of certain machines, in the so-called "400" line of blowers and forges, which machines are not now and were not during such years, covered or affected by any valid subsisting patent, with the exception of patent No. 697629, for a combined gearing and casing, which patent expired April 15, 1918, and prior to the wrongful acts of respondent hereinafter set forth; that in connection with said cuts or pictures statements were made in said catalogue that such machines were "patented," and a list of numbers of patents was also given, said numbers being the numbers of the aforesaid patents which had expired; all of which purported to show that such machines were and are still patented, and tended to mislead and deceive the public into the belief that said machines of the so-called "400" line, were protected by letters patent.

PAR. 5. That respondent by its treasurer, Charles B. Long, informed the Fairbanks Co., a wholesale distributor and jobber of New York, N. Y., by letter dated July 22, 1919, as follows: .

Please be advised that we retain in active condition, design patents covering every portion of our No. "400" blower—not to mention the trade-mark "No. 400," all of which are in active condition and which must be respected."

And also informed the Fairbanks Co. aforesaid, by letter dated July 15, 1919, that respondent had secured a verdict in its favor, after suit had gone through the patent courts, against the Buffalo Forge

Co., of Buffalo, N. Y., for infringements of respondent's patents on the No. "400" blower and forge line; that such letters induced the Fairbanks Co. aforesaid to cease buying the forges and drills of the Buffalo Co. and that the Fairbanks Co. aforesaid instructed its branch houses to cease buying the Buffalo Co.'s forges and drills similar to the "400" line of forges and "200" line of drills made by the respondent, said action on the part of the Fairbanks Co. aforesaid being taken in July, 1919; that the Fairbanks Co. aforesaid had theretofore bought such blowers and forges and drills from both the Buffalo Forge Co. and the respondent, and had done a considerable business with the Buffalo Forge Co. in such products; that such statements given to the Fairbanks Co. as aforesaid were false and misleading, inasmuch as there was a considerable part of respondent's "400" line of blowers and forges which were not covered by any valid and subsisting patents.

PAR. 6. That in May, 1919, respondent's president, Henry B. Keiper, with the ostensible purpose of warning against infringement of certain patents on certain drills manufactured and sold by respondent, called upon certain of the officers of the Baker, Hamilton & Pacific Co., a wholesale distributor and jobber of San Francisco, Calif., and by his, the said Keiper's, statements and conduct induced the said officers to believe that respondent's patents covered all the products manufactured by it, and especially the "400" line of blowers and forges and the "200" line of drills, and to believe that it, the said Baker, Hamilton & Pacific Co., would infringe said patents if it handled any of the blowers and forges and drills manufactured by the aforesaid Buffalo Forge Co. That thereafter, when requested so to do by one C. F. Sharrocks, the manager of the purchasing department of the said Baker, Hamilton & Pacific Co., by letters dated June 15, 1919, July 14, 1919, and August 21, 1919, said Keiper refused to indicate what products of the said Buffalo Co. infringed any of the patents on the products of respondent, or to answer any questions in regard to same. That said conduct and statements of said Keiper were false and misleading inasmuch as there was a considerable part of respondent's "400" line of blowers and forges which were not and are not now covered by any valid, subsisting patent or patents.

#### CONCLUSIONS.

Under the conditions and circumstances set forth in the foregoing findings of facts, the acts and practices of the respondent 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.

3 F. T. C.

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein; and the respondent, Champion Blower & Forge Co., having entered its appearance by its attorneys, Julian C. Dowell, Esq., and Thurman, Bulkley & Quigley, duly authorized and empowered to act in the premises; and having filed its answer; and thereafter testimony having been taken before an examiner for the Federal Trade Commission on April 22, 1920, in New York, N. Y.; and thereafter an agreed statement of facts having been executed by counsel for the respondent and counsel for the Commission, which agreed statement of facts has been filed in this said cause, it being stipulated and agreed therein that the Federal Trade Commission shall take such agreed statement of facts, together with testimony taken at said hearing in New York City, as the evidence in this case; 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 the Federal Trade Commission act, which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondent, its officers, directors, members, representatives, agents, and servants cease and desist:

1. From stating or holding out to the public, or any member, thereof, that respondent owns or controls any valid subsisting patent or patents, when it in truth has no such patent or patents, or when, if it at any time had such patent or patents, the same has or have expired.

2. From threatening to bring any action at law or suit in equity against any person, copartnership, or corporation, for the alleged infringement of any patent or patents upon any of its products, unless:

(a) Respondent owns or controls a valid subsisting patent or patents, which it in good faith believes to be actually infringed by the party so threatened; and

(b) Respondent clearly and plainly sets forth, in the course of such notice, the specific patent or patents which respondent in good faith believes to be actually infringed by the person, copartnership, or corporation so threatened; and, at the same time, clearly and plainly sets forth the nature and respect of such alleged infringement; and

(c) Respondent has at such time a bona fide intention to institute the threatened action at law or suit in equity against the person, copartnership, or corporation so threatened in case the alleged infringement continues; and, in case the alleged infringement continues, does actually bring such action at law or suit in equity against the person,

## Order.

copartnership, or corporation so threatened, with reasonable expedition thereafter, and with all reasonable expedition prosecutes such action or suit to a final judgment or decree.

3. From stating in its catalogues, advertisements, or other printed matter, distributed or displayed to the public, that any of its products is "patented" unless such product, or some essential part thereof, is actually covered by a valid subsisting patent owned or controlled by respondent; *Provided*, That this shall not prevent respondent from making such statements as aforesaid in connection with any of its products upon which, or upon any essential part of which, letters patent have been issued and have expired, if the fact that such patent has expired be clearly and plainly indicated in connection with such statement in such catalogue, advertisement, or other printed matter.

*It is further ordered*, That the respondent shall file with the Commission within 90 days from the date of this order its report in writing, stating in detail the manner and form in which this order, and in particular paragraph 3 of this order, has been conformed to, and shall attach to such report true copies of all catalogues, advertisements, or other printed matter, distributed or displayed to the public by respondent, subsequent to the date of this order, in which any statement is made in respect to any patent or patents owned or controlled by the respondent.



Complaint.

3 F. T. C.

## FEDERAL TRADE COMMISSION

v.

## ADOLPH BRAUDE AND LOUIS BRAUDE, DOING BUSINESS AS FRANKLIN KNITTING MILLS.

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

Docket 605—December 6, 1920.

## SYLLABUS.

Where a corporation engaged in the manufacture, sale, and distribution of knitted fabrics under the name of the Franklin Knitting Mills, of New York, and as such acquired a reputation for its product, and thereafter a competitor adopted the name "Franklin Knitting Mills," with the tendency and effect of misleading and deceiving the purchasing public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Adolph Braude and Louis Braude, partners, conducting business and trading under the style and firm name of Franklin Knitting Mills, have been, and now are, using unfair methods of competition in commerce, in violation of the intent and meaning of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Federal Trade Commission having determined that a complaint should issue against the said Adolph Braude and Louis Braude, trading as Franklin Knitting Mills, as above set forth, and that a full and complete inquiry in respect thereof would be to the interest of the public;

Therefore the Federal Trade Commission, complaining, shows that it is informed in such manner that it believes the facts to be substantially as herein set out, and therefore charges as follows:

PARAGRAPH 1. That the said Adolph Braude and Louis Braude are partners, conducting business under the style and firm name of Franklin Knitting Mills, at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and also at 1182 Broadway, in the city of New York, in the State of New York; that the said respondents have their principal office and place of business at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and a branch office and place of busi-

ness at 1182 Broadway, in the city of New York, in the State of New York, and are engaged in the business of buying and selling knitted goods and other merchandise as wholesale merchants or jobbers.

PAR. 2. That the said Adolph Braude and Louis Braude, conducting their business under the style and firm name of Franklin Knitting Mills, have been continuously for a year last past, and still are, engaged in commerce, as defined by the act of Congress approved September 26, 1914, as above set forth; that their business consists of buying and selling knitted goods and other kinds of merchandise in the city of Philadelphia, in the State of Pennsylvania, and the city of New York, in the State of New York, and transporting said goods and merchandise among other States and Territories of the United States and the District of Columbia, and there is continually, and has been at all times within the year last past, and for a longer period of time, a constant current of trade, in commerce, by said respondents in such knitted goods and other merchandise among and between the various States of the United States, the Territories thereof, and the District of Columbia, to and through the city of Philadelphia, in the State of Pennsylvania, and the city of New York, in the State of New York, and therefrom through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the said Adolph Braude and Louis Braude, partners in business and trading under the style and firm name of Franklin Knitting Mills, while engaged in commerce in the course of their business of buying and selling knitted goods as wholesale merchants or jobbers, with their offices and places of business located at 811 North Franklin Street, in the city of Philadelphia, and 1182 Broadway, in the city of New York, have been for more than a year last past, and still are, trading as Franklin Knitting Mills, and in the conduct of their business as jobbers have adopted the name of Franklin Knitting Mills as the firm's name; that the words "Knitting Mills" used after the word "Franklin," in such name, indicate, represent, and lead the trade, customers, and public generally to believe that the said parties, operating under said firm name, are manufacturers, and manufacture, or knit, the knitted goods advertised and sold in commerce by them, when in truth and in fact the said defendants are not manufacturers and do not manufacture and knit such goods, but are wholesale merchants or jobbers and buy the goods so advertised and sold by them.

PAR. 4. That the said Adolph Braude and Louis Braude formed a partnership for the conduct of business as wholesale dealers in

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knitted goods and other merchandise in the year 1913, adopted the name of Franklin Knitting Mills, and engaged in business as wholesale merchants or jobbers at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and also had another branch place of business at 1182 Broadway, in the city of New York, State of New York, in commerce, under said firm name of Franklin Knitting Mills; that the respondents do not knit or manufacture the goods, or any part of them, sold by them; that at the time the said respondents began their business under the firm name of Franklin Knitting Mills there was then in existence a corporation whose legal corporate name was "Franklin Knitting Mills (Inc.)," which corporation was engaged in commerce and had been chartered, organized, and engaged in business since the year 1909, for some time previous to the time that respondents adopted and selected their name and began their business; that the said Franklin Knitting Mills (Inc.) conducted its business at 511 East Seventy-second Street, in the city of New York, in the State of New York, where it manufactured and knitted a part of the goods sold by it, and also had a sales house at 200 Fifth Avenue, in the city of New York, and is still actively engaged in conducting its business, and while it was so conducting its business the respondents chose and adopted the name of Franklin Knitting Mills and operated and conducted the same general kind of business of buying and selling knitted goods and other merchandise, and the said respondents, although they have adopted the name of Franklin Knitting Mills and continued to conduct their business under such name, do not manufacture or knit any of the goods sold by them.

PAR. 5. That by reason of the facts in this complaint, hereinbefore set out, the respondents, Adolph Braude and Louis Braude, by adopting and continuing to use the name of Franklin Knitting Mills, which is similar to the name of the New York corporation whose corporate name is Franklin Knitting Mills (Inc.), which was engaged in business when respondents' firm was organized, both in the city of Philadelphia and the city of New York, and in using the words "Knitting Mills," indicating that they knit or manufacture the goods, or part of the goods, sold by them, are [using] unfair methods of competition in commerce in violation of section 5 of the Federal Trade Commission act approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Adolph Braude and Louis Braude, doing

business as Franklin Knitting Mills, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having filed their answer herein, and subsequently entered their appearance by their attorneys, Messrs. Mingle, Finklestein & Ehrich, a hearing was had and evidence was thereupon introduced in support of the allegations of said complaint before Byron L. Shinn, an examiner of the Federal Trade Commission, theretofore duly appointed.

And thereupon counsel for respondents stated, during such hearing and before said examiner, that it was shown that respondents' use of the name "Franklin Knitting Mills" had caused confusion in the public mind, and that similar conflict and confusion might arise in the future, and that respondents would not in the future conduct their business under such name, and that respondents consented that the Federal Trade Commission enter such order in this regard as it deemed necessary, all of which will more fully appear from the files and record of this cause.

And thereupon this proceeding came on for final disposition, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the said Adolph Braude and Louis Braude are partners, and have been since 1913, conducting business under the style and firm name of Franklin Knitting Mills, at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and also at 1182 Broadway, in the city of New York, in the State of New York; that the said respondents have their principal office and place of business at 811 North Franklin Street, in the city of Philadelphia, in the State of Pennsylvania, and a branch office and place of business at 1182 Broadway, in the city of New York, in the State of New York, and are engaged in the business of buying and selling knitted goods and other merchandise, as wholesale merchants or jobbers.

PAR. 2. That the said Adolph Braude and Louis Braude, conducting their business under the style and firm name of Franklin Knitting Mills, have been continuously for a year last past, and still are, engaged in commerce, as defined by 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"; that their business consists of buying and selling knitted goods in the city of Philadelphia, in the State of Pennsylvania, and

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the city of New York, in the State of New York, and transporting said goods and merchandise among other States and Territories of the United States and the District of Columbia, and there is continually, and has been at all times within the year last past, and for a longer period of time, a constant current of trade, in commerce, by said respondents in such knitted goods among and between the various States of the United States, the Territories thereof, and the District of Columbia, to and through the city of Philadelphia, in the State of Pennsylvania, and the city of New York, in the State of New York, and therefrom through other States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, partnerships, and corporations, similarly engaged in buying, selling, and transporting knitted goods, in and through the several States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That in 1909 the Franklin Knitting Mills, of New York, was duly and lawfully organized as a corporation, adopting and using such name as its corporate name, which name it has used and enjoyed continuously from such time down to the present time, and still uses and enjoys such name, as its corporate and business name. That said Franklin Knitting Mills, of New York, is and has been since such time engaged in the manufacture and production of knitted fabrics, and particularly of silk-knitted fabrics, such as knitted underwear, mufflers, sweaters, scarfs, etc. That the principal place of business of said Franklin Knitting Mills, of New York, was and is at 511 East Seventy-second Street, in the city of New York, State of New York, where it manufactures the goods sold by it; and the showroom and sales house of said Franklin Knitting Mills, of New York, was and is at 200 Fifth Avenue, in said city and State. That said Franklin Knitting Mills, of New York, maintained for a considerable time a branch office or agency in the city of Philadelphia, State of Pennsylvania. That said Franklin Knitting Mills, of New York, has been since the time aforesaid and is now also engaged in the sale and distribution of the said products manufactured by it, as aforesaid, in and through the several States of the United States, the Territories thereof, and the District of Columbia. That said Franklin Knitting Mills, of New York, when organized and incorporated in 1909, as aforesaid, took over the business, assets, trade name, etc., of a concern known as Baron & Shafter, which concern had for a considerable time prior to 1909, when it was taken over by said Franklin Knitting Mills, of New York, as aforesaid, conducted its business of manufacturing, selling, and distributing knitted goods under the trade name of Franklin Knitting Mills.

PAR. 4. That said Franklin Knitting Mills, of New York, while engaged in the manufacture, distribution, and sale of knitted goods, as aforesaid, had built up and now enjoys a business of considerable magnitude and importance. That it always dealt with its customers and sold its aforesaid knitted goods under its corporate name, Franklin Knitting Mills, of New York; and was widely known to the trade and public generally under such name, and no other, and the knitted goods manufactured and sold by it were widely and favorably known to the public as the goods of the Franklin Knitting Mills, of New York.

PAR. 5. That notwithstanding the trade and business enjoyed by Franklin Knitting Mills, of New York, under such name, and the valuable good will of said Franklin Knitting Mills, of New York, in such name, the respondents, Adolph Braude and Louis Braude, as aforesaid, adopted as their trade name "Franklin Knitting Mills," the same name as the corporate and business name of Franklin Knitting Mills, of New York. That under the name, "Franklin Knitting Mills," respondents sold knitted goods to divers purchasers in the several States of the United States, the Territories thereof, and the District of Columbia, as aforesaid. That the name "Franklin Knitting Mills, of New York," appeared upon the letterhead, envelopes, invoices, statements, bills, and all other stationery used in its business by Franklin Knitting Mills, of New York, and likewise appeared upon the cards used by its salesmen. That upon the letterhead, stationery, etc., used in the course of their business by respondents, appear the words: "Franklin Knitting Mills, 811 North Franklin Street, Philadelphia, Pa., manufacturers of knit wear." That the respondents do not manufacture the knitted goods or other merchandise sold and distributed by them, but are wholesalers or jobbers, as aforesaid. That Franklin Knitting Mills, of New York, maintained for a considerable time a branch office or agency in the city of Philadelphia, State of Pennsylvania, as aforesaid. That the natural effect and tendency of the use of such name by respondents, as aforesaid, was and is to mislead and deceive the purchasing public, and to lead the public to believe that respondents were one and the same concern as Franklin Knitting Mills, of New York, and that the knitted goods sold and distributed by respondents were the knitted goods manufactured, sold, and distributed by Franklin Knitting Mills, of New York. That on several occasions the purchasing public has been so misled and deceived, as aforesaid, and misled and confused as to the identity of respondents, taking them to be one and the same as Franklin Knitting Mills, of New York.

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PAR. 6. That pursuant to the provisions of an act of the Assembly of the Commonwealth of Pennsylvania, approved June 28, 1917, and entitled, "An act making it unlawful for any individual or individuals to carry on or conduct any business under an assumed or fictitious name, style, or designation unless upon the filing of a certificate to that effect in the office of the secretary of the Commonwealth and of the prothonotary, etc.," under date of January 31, 1918, one of said respondents, to wit, Adolph Braude, filed such certificate, stating that he was "Carrying on business under the assumed or fictitious name, style, or designation of Franklin Knitting Mills, with place of business" in the city of Philadelphia, State of Pennsylvania.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondents, Adolph Braude and Louis Braude, copartners, doing business under the trade name and style of Franklin Knitting Mills, do cease and desist from directly or indirectly, either severally as individuals or jointly as a partnership, or otherwise, using the words "Franklin Knitting Mills," in connection with any advertising, or offering for sale, or sale of knitted merchandise such as knitted cloth, vests, sweaters, and neckwear.

*It is further ordered,* That the respondents, within 30 days after the receipt of a copy of this order, report in writing to the Commission the manner and extent to which compliance with this order has been made by said respondents.

## Complaint.

FEDERAL TRADE COMMISSION  
v.  
MONTGOMERY WARD & COMPANY.

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

Docket 610—December 6, 1920.

## SYLLABUS.

Where a mail-order house in its catalogues falsely advertised that a liquid roof cement there offered contained no coal tar, and prominently displayed a guarantee that "We promise you that every article illustrated or priced in this book will reach you precisely as described"; with the tendency and effect thereby of misleading and deceiving the purchasing public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Montgomery Ward & Co., hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, 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 said Montgomery Ward & 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 in the city of Chicago, in said State.

PAR. 2. That the respondent is now and for more than two years last past has been engaged in the business of selling throughout the various States and Territories of the United States and the District of Columbia, various machines, instruments, preparations, supplies, clothing, furnishings, building materials, roofing preparations, and other articles in competition with other persons, firms, copartnerships, and corporations similarly engaged, and there is now and has been at all times hereinafter mentioned a constant current of trade in commerce in said various machines, instruments, preparations,



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supplies, clothing, furnishings, building materials, roofing preparations, and other articles among and between the various States of the United States, the Territories thereof, and the District of Columbia, especially to and through the city of Chicago in the State of Illinois, and therefrom to and through other States of the United States and Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent has been for more than two years last past, and still is, doing business as a mail-order house and distributes throughout the various States and Territories of the United States, the District of Columbia, and foreign countries, printed catalogues in which it advertises the various articles it offers for sale; that the respondent has been within two years last past, and still is, by means of advertisements in its said catalogues, offering for sale a liquid roofing cement in which said advertisements the respondent represents that the said liquid roofing cement so advertised by it for sale contains no coal tar, when in truth and in fact the said liquid roofing cement so offered for sale by the respondent and represented by the respondent to contain no coal tar does contain coal tar, which respondent has well known; that such advertisements are false and misleading because in truth and in fact, as respondent well knows, said liquid roofing cement does contain coal tar.

PAR. 4. That by reason of the facts hereinbefore alleged the respondent is and has been using unfair methods of competition in commerce in violation of the provisions of section 5 of an act of Congress entitled: "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

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

The respondent having entered its appearance by its attorney, George R. Durgan, Esq., and filed its answer herein, an agreed statement of facts was thereupon executed by counsel for respondent and the chief counsel for the Commission and duly filed in this cause, said agreed statement of facts being in lieu of evidence, no testimony being taken or other evidence offered herein.

The respondent, by such agreed statement of facts, agreed to waive oral argument and the privilege of filing a written brief, and consented that the Commission should thereupon make and enter its report of findings as to the facts, and its order, disposing of this cause.

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Montgomery Ward & 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 in the city of Chicago, in said State.

PAR. 2. That the respondent is now and for more than two years last past has been engaged in the business of selling throughout the various States and Territories of the United States, and the District of Columbia, various machines, instruments, preparations, supplies, clothing, furnishings, building materials, roofing preparations, and other articles, in competition with other persons, firms, copartnerships, and corporations similarly engaged; and there is now and has been at all times hereinafter mentioned a constant current in trade and commerce in the said various machines, instruments, preparations, supplies, clothing, furnishings, building materials, roofing preparations, and other articles, among and between the various States of the United States, the Territories thereof, and the District of Columbia, especially to and through the city of Chicago, in the State of Illinois, and therefrom to and through the other States of the United States and the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent has been for more than two years last past doing business as a mail-order house and distributing throughout the various States and Territories of the United States, the District of Columbia, and foreign countries printed catalogues in which it advertises various articles it offers for sale; and that the respondent has been, for more than two years last past, by means of advertisements in its said catalogues, offering for sale a liquid roof cement, in which said advertisements respondent has represented that said liquid roof cement contains no coal tar. That said representation was false, because said liquid roof cement did in truth and fact contain coal tar, all of which respondent knew or ought to have known. That such false representation in such advertisement in said

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catalogues tended to and did deceive and mislead the purchasing public and tended to and did cause the purchasing public to believe that respondent's liquid roof cement contained no coal tar, whereas in truth and fact such liquid roof cement did contain coal tar.

PAR. 4. That in the fore pages of each of the aforesaid catalogues of respondent appeared a prominently displayed guaranty, in substance as follows:

We promise you that every article illustrated or priced in this book will reach you precisely as described.

That the aforesaid false representation, that said liquid roof cement contained no coal tar, together with the aforesaid guaranty, that every article described in such catalogues would reach the purchaser exactly as described, tended to and did mislead and deceive the purchasing public, and cause them to believe that respondent's liquid roof cement contained no coal tar, whereas in truth and fact such liquid roof cement did contain coal tar.

PAR. 5. That there was no evidence to show that the respondent did in fact know that the said liquid roof cement did contain coal tar.

PAR. 6. That on or about January 14, 1920, the respondent being informed by a representative of the Federal Trade Commission of said false and misleading advertisement, discontinued the further sale of said liquid roof cement, advertised as aforesaid.

#### CONCLUSION.

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

#### ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the agreed statement of facts, duly and regularly filed herein in lieu of testimony and as the evidence in this case, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

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Order.

*It is now ordered*, that the respondent, Montgomery Ward & Co., and its officers, representatives, agents, and servants, do cease and desist:

From publishing, circulating, or causing to be published or circulated, throughout the several States of the United States, the Territories thereof, the District of Columbia, or foreign countries, any representation, whether in respondent's catalogues, advertisements, or otherwise, that liquid roof cement, sold or offered for sale by respondent, contains no coal tar, unless such liquid roof cement does in truth and in fact contain no coal tar.

Complaint.

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## FEDERAL TRADE COMMISSION

v.

WAVERLY BROWN, MRS. WAVERLY BROWN, AND JOHN T. CONLEY, TRADING AS ILLINOIS STORAGE CO., CHICAGO STORAGE CO., CHICAGO STORAGE SALES CO., AND TYROLIA TALKING MACHINE CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 28, 1914.

Docket 574.—December 21, 1920.

## SYLLABUS:

Where persons regularly engaged in the manufacture, and sale by mail, of phonographs resembling well-known makes,

- (a) Adopted the trade names Illinois Storage Co., Chicago Storage Co., and Chicago Storage Sales Co., for the purpose, and with the effect, of deceiving purchasers and the public generally as to the true nature of their business;
- (b) Falsely advertised under one of their various trade names (1) that the phonographs advertised had been stored for safe-keeping and were offered for sale to cover unpaid storage charges; (2) that in the course of their storage and warehouse business they had come into possession of a single phonograph or single lots of phonographs, never removed from the original crates in which shipped from the factory, now offered for sale for the purpose of covering unpaid storage;
- (c) Advertised under their individual names, offering for sale slightly used phonographs of standard makes of great value, at abnormal and unusual reductions from full standard prices, for the purpose, and with the effect of, misleading purchasers and the public generally into believing that the advertiser, as a householder, was offering an instrument theretofore purchased for his own use, the fact being that the phonographs offered were manufactured to sell, and were customarily sold, by said persons at less than one-third of the price at which advertised;

All for the purpose of disposing of new phonographs manufactured by them under the name of the Tyrolia Talking Machine Co.:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Waverly Brown, Mrs. Waverly Brown, and T. F. Conley, copartners trading under the name and style of Illinois Storage Co., Chicago Storage Co., Chicago Storage Sales Co., and Tyrolia Talking Machine 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 since March, 1919, have been operating a business in the city of Wilmette, in the State of Illinois; that the business so conducted consists and has consisted of the manufacture and sale in commerce among the several States and Territories of the United States, and the District of Columbia, of phonographs, resembling in appearance but inferior in quality to phonographs made by well-known manufacturers, said phonographs being sold direct to purchasers and users thereof by means of catalogue and other advertising matter, in direct competition with other firms, corporations, copartnerships, and persons.

PAR. 2. That said respondents in the course of their said business, made use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States, and the District of Columbia; that said catalogues and advertising matter contain representations and statements calculated to deceive and do deceive the purchasing public into the belief that slightly used phonographs of standard make of highest value are being offered for sale by private owners at abnormal and unusual reductions from full standard resale values, when in truth and in fact said phonographs are not privately owned, but are new and unused and of grade and quality much inferior to phonographs of the standard makes which they are made to imitate, and are manufactured by respondent to sell to purchasers and users thereof, and are sold by respondent to purchasers and users thereof for less than one-third of the stamped resale price at which they are listed in respondent's said catalogues.

PAR. 3. That said respondents, in the course of their said business, make use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States, and the District of Columbia; that said advertisements are worded so as to deceive and do deceive the purchasing public into the belief that phonographs so advertised have been stored for safe-keeping with one or the other of respondents, Illinois Storage Co., or Chicago Storage Co., or Chicago Storage Sales Co., and are being offered for sale for the purpose of reimbursing one or

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the other of said respondents for unpaid storage charges, when in truth and in fact such phonographs have never been so stored, nor do said respondents now nor have they or any of them at any time since March, 1919, conducted a storage or warehouse business of any kind, but respondents have been and are using the titles Illinois Storage Co., Chicago Storage Co., and Chicago Storage Sales Co., as sham trade names for the purpose and with the effect of accomplishing said deceptions in selling phonographs of their own manufacture.

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

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served upon two of the respondents, Waverly Brown and Mrs. Waverly Brown, a complaint charging each of them with the use of unfair methods of competition in commerce in violation of the provisions of said act. John T. Conley, properly a respondent in the said proceeding in the place and stead of one T. F. Conley, named in the original complaint as one of the respondents, waived the issuance and service upon him of a complaint amended so as to name him a respondent and agreed to come into this proceeding and submit, for the purpose of jurisdiction, to such order as the Commission might make in disposing of this proceeding, with the same force and effect as if the said John T. Conley had been originally made a party to the said proceeding by being named as a respondent in the complaint and by having been served with a copy of the complaint and by having been given an opportunity to answer the said complaint.

Hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission, theretofore duly appointed.

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Waverly Brown and John T. Conley, in the period from March, 1919, to and until August, 1919, were engaged as partners at Wilmette, Ill., in the business of manufacturing phonographs, resembling in appearance those made by well-known manufacturers, and in selling the same in commerce among the several States and Territories of the United States and the Dis-

trict of Columbia, in competition with other persons, firms, and corporations similarly engaged.

The said respondents in the sale of the phonographs made by them used the following trade names, to wit: Illinois Storage Co., Chicago Storage Co., and Chicago Storage Sales Co. The phonographs made by the said respondents were manufactured by them under the trade name of the Tyrolia Talking Machine Co. Mrs. Waverly Brown, one of the respondents, assisted Waverly Brown and John T. Conley, respondents, in the sale of the phonographs manufactured by the said Waverly Brown and John T. Conley, respondents.

PAR. 2. The phonographs sold by the respondents, Waverly Brown and John T. Conley, were advertised for sale by means of newspaper advertisements, catalogues, correspondence, and such other ways peculiar to what is known commonly as the mail-order business. The newspaper advertising done by the respondents was of the following two classes, viz:

(a) Advertisements in the classified advertising columns in newspapers circulating in Illinois and Wisconsin, in which the names of the advertisers were given as Mrs. Waverly Brown or Waverly Brown, which advertisements offered for sale slightly used phonographs of standard makes of great value, at abnormal and unusual reductions from full standard resale prices. These advertisements did not disclose that the advertiser was engaged in the business of selling phonographs or was selling phonographs for the manufacturers, but conveyed the impression that the advertiser was a householder and was offering for sale a phonograph which had been purchased by such householder for his own use and which had been used by such householder only a short time;

(b) Advertisements in which the respondents, Waverly Brown and John T. Conley, used the following trade names: Illinois Storage Co., Chicago Storage Co., and Chicago Storage Sales Co., which newspaper advertisements, together with the catalogues and letters used by said respondents, contained certain false and misleading statements as follows:

(1) That the phonographs so advertised had been stored for safe-keeping with one or another of the storage concerns intended to be indicated by the title used, and that such phonographs were offered for sale for the purpose of reimbursing such storage concern for unpaid storage charges.

(2) That said respondents were regularly engaged in the storage and warehouse business, and by reason of conducting such business, came into possession of a single phonograph, or single lots of phonographs, which had never been removed from the cases in which they



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were crated when they left the factory, and were being offered for sale by said respondents for the purpose of reimbursing them for unpaid storage charges.

PAR. 3. The phonographs advertised for sale by respondents, Waverly Brown and John T. Conley, which advertisements were in the name of Waverly Brown and Mrs. Waverly Brown, were new and unused phonographs, and the supply was limited only by the capacity of Waverly Brown and John T. Conley, respondents, to replenish through manufacture such needs as the said Waverly Brown, respondent, and Mrs. Waverly Brown, respondent, might have through answers to such advertisements.

PAR. 4. That the respondents, Waverly Brown and John T. Conley, from March, 1919, to and until the month of August, 1919, during which period they were engaged in the manufacture and sale of phonographs in the manner herein described, were not engaged in the storage and warehouse business, but were regularly engaged in the business of manufacturing and selling phonographs of a grade and quality which were manufactured to sell at resale and were customarily sold by respondents in the regular course of their business at less than one-third of the resale price (\$250), at which such phonographs were listed in the advertising matter of respondents; that the phonographs dealt in by such respondents in the period hereinbefore mentioned were not stored, and the number of phonographs offered for sale by such respondents' advertisements were not limited as advertised, but were taken from respondents' regular stock, which respondents were replenishing from time to time.

PAR. 5. That each and every one of the trade names, Illinois Storage Co., Chicago Storage Co., and Chicago Storage Sales Co., was used by the respondents, Waverly Brown and John T. Conley, for the purpose and with the effect of deceiving purchasers and prospective purchasers and the public generally into believing that such respondents were conducting the business of storing household goods, and for the purpose and with the effect of accomplishing the deception intended by the use of the false and misleading statements mentioned in subdivision (b) of paragraph 2 hereof.

PAR. 6. That such respondents, Waverly Brown and John T. Conley, used the name of Mrs. Waverly Brown, respondent, with her consent, and used the name of Waverly Brown, in advertisements offering phonographs for sale for the purpose and with the effect of deceiving the purchasers and prospective purchasers and the public generally into believing that such purchasers and prospective purchasers were being offered a phonograph of standard make of certain resale price, to wit, \$250, which said phonograph had been slightly

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used, when in truth and in fact the respondents intended, by the use of such advertisements, to dispose of new phonographs manufactured by them under the name of the Tyrolia Talking Machine Co.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the testimony, and evidence, and the Commission having made its findings as to the facts with the conclusion that the respondents have violated the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That the respondents, Waverly Brown, Mrs. Waverly Brown, and John T. Conley, do cease and desist from selling in interstate commerce, new and unused phonographs, manufactured by them or any of them, or dealt in by them or by any of them as a business, by means of advertising matter, circulated throughout the States and Territories of the United States, having a tendency to mislead the public into believing that slightly used phonographs of standard make of highest values are being offered for sale by private owners at abnormal and unusual reductions from full standard resale prices, when in truth and in fact said phonographs are new and unused and are manufactured by Waverly Brown and John T. Conley, respondents, to sell to purchasers and users thereof and are sold by such respondents to purchasers and users thereof for less than one-third of the stamped resale price at which they are listed in the catalogues of said respondents.

*It is further ordered,* That the respondents, Waverly Brown and John T. Conley, do cease and desist from using in their advertising matter, circulated throughout the States and Territories of the United States, and in the sale in interstate commerce of phonographs, any of the following trade names, to wit: Illinois Storage Co., Chicago Storage Co., Chicago Storage Sales Co., or any other trade name which might have a tendency to lead the public into believing

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that the business conducted by the said Waverly Brown and John T. Conley is that of storing household goods.

*It is further ordered,* That the said Waverly Brown, Mrs. Waverly Brown, and John T. Conley, shall within 60 days after the service of a copy of this order upon them, file with the Commission a report in writing stating in detail the manner in which this order has been complied with and conformed to.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

P. TYRRELL WARD, TRADING UNDER THE NAME AND  
STYLE OF HOUSEHOLD STORAGE CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5  
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 575.—December 21, 1920.

## SYLLABUS.

Where a person regularly engaged in the sale by mail of phonographs resembling well-known makes,

- (a) Adopted the trade name Household Storage Co. for the purpose, and with the effect, of deceiving purchasers and the public generally as to the true nature of his business;
- (b) Falsely advertised (1) that in the course of his storage and warehouse business he had come into possession of a single phonograph or single lots of phonographs, never removed from the original crates in which shipped from the factory, of a value greatly in excess of the price at which offered; and (2) that such offers were limited to a single phonograph or lot, and would not again be made; and
- (c) Offered said phonographs at less than one-third of the prices at which listed in his advertising matter, the fact being that such phonographs were manufactured to sell, and were customarily sold, by him at the prices at which offered:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that P. Tyrrell Ward, trading under the name and style of the Household Storage 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 now is, and for more than a year last past has been, operating a business in the city of Chicago, in the State of Illinois; that the business so conducted consists and

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has consisted of the sale in commerce among the several States and Territories of the United States, and the District of Columbia, of phonographs resembling in appearance but inferior in quality to phonographs made by well-known manufacturers, which respondent sells direct to purchasers and users thereof, by means of catalogues and other advertising matter, and in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That said respondent, in the course of his business, made use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States, and the District of Columbia; that said catalogues and advertising matter contain certain false and misleading statements and representations concerning respondent's said business and alleged benefits which the public might derive from trading with respondent; that among such false and misleading statements and representations are statements and representations to the effect that respondent is regularly engaged in the storage or warehouse business, and by reason thereof comes into possession of a single phonograph, or of single lots of phonographs, which have never been removed from the cases in which they left the factory; that these new phonographs are advertised by respondent as of value vastly in excess of the value at which respondent is offering them for sale to purchasers and prospective purchasers; that such offers of sale are limited to a single phonograph, or a single lot of phonographs, and will not again be so offered, when in truth and in fact respondent is not now, and for more than a year last past, has not been engaged in the storage or warehouse business, but is regularly engaged in the business of merchandizing phonographs of a grade and quality which are manufactured to sell at resale and are customarily sold at resale by respondent in the regular course of his business at less than one-third of the resale price at which they are listed in respondent's said catalogues; that said phonographs have not been so stored, and the number so offered for sale are not limited as so advertised, but are taken from respondent's regular trade stock which can be and is replenished by respondent at will; and that the said trade name is so used by respondent for the purpose and with the effect of accomplishing said deceptions in the sale of phonographs.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, P. Tyrrell Ward, trading under the name and style of Household Storage Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

**FINDINGS AS TO THE FACTS.**

PARAGRAPH 1. That the respondent, in the period from November, 1918, to and until the month of March, 1920, operated a business in the city of Chicago, in the State of Illinois, under the name and style of Household Storage Co., which business consisted of the sale in commerce among the several States and Territories of the United States and the District of Columbia, of phonographs resembling in appearance those made by well-known manufacturers; that the respondent, in competition with other persons, firms, and corporations engaged in the sale of phonographs throughout the various States and Territories of the United States and the District of Columbia, sold phonographs to purchasers, directly, by means of advertising matter, catalogues, correspondence, and such other ways peculiar to what is known commonly as the mail-order business.

PAR. 2. That the advertising matter used by respondent in the course of his business contained certain false and misleading statements, among which were the following, viz:

(a) That respondent was regularly engaged in the storage and warehouse business and by reason of conducting such business came into possession of a single phonograph or single lots of phonographs which had never been removed from the cases in which such phonographs were crated when they left the factory.

(b) That such phonographs were of a value vastly in excess of the price at which respondent offered them for sale to purchasers and prospective purchasers; that such offers of sale were limited to

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a single phonograph or to a lot of single phonographs that would not again be made.

PAR. 3. That respondent in the period from November, 1918, to and until the month of March, 1920, during which period he was engaged in the sale of phonographs in the manner hereinbefore described, was not engaged in the storage or warehouse business but was regularly engaged in the business of selling phonographs of a grade and quality which were manufactured to sell at resale and were customarily sold at resale by respondent in the regular course of his business at less than one-third of the resale price (\$250) at which such phonographs were listed in the advertising matter of respondent; that the phonographs dealt in by the respondent in the period hereinbefore mentioned were not stored, and the number of phonographs offered for sale by respondent's advertisements were not limited as advertised but were taken from respondent's regular stock, to replenish which the respondent had made arrangements with the manufacturer.

PAR. 4. That the trade name Household Storage Co. was used by the respondent for the purpose and with the effect of deceiving purchasers and prospective purchasers and the public generally into believing that the respondent was conducting a business principally of storing household goods and incidentally selling phonographs, and for the purpose and with the effect of accomplishing the deceptions intended by the use of the false and misleading statements set forth in paragraph 2 hereof.

#### CONCLUSIONS.

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

#### ORDER TO CEASE AND DESIST.

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

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*It is now ordered,* That the respondent, P. Tyrrell Ward, and his agents and employees do cease and desist from using in the sale in interstate commerce of phonographs the trade name of Household Storage Co., or any other trade name which might have a tendency to lead the public into the belief that the business conducted by the said P. Tyrrell Ward is that of storing household goods.

*And it is further ordered,* That the said P. Tyrrell Ward shall, within 60 days after the service of a copy of this order upon him, file with the Commission a report in writing, stating in detail the manner in which this order has been complied with and conformed to.



## FEDERAL TRADE COMMISSION

v.

## BOSTON PIANO &amp; MUSIC COMPANY,

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

Docket 277.—December 30, 1920.

## SYLLABUS.

Where a corporation engaged in the purchase, and sale to retailers, of talking machines, as a part of its sales plan or scheme, and acting through its agents,

- (a) Used a printed paper or instrument, consisting in part of a contract and in part of a promissory note, which printed instrument (1) was falsely and deceptively worded; (2) contained the false and misleading word "order" in large type on that part of the instrument or paper constituting the contract; (3) contained the words "Masterphone Talking Machine Co., Owned and Operated by Boston Piano & Music Co. (Inc.)," in large type on that part of the instrument constituting the contract, the fact being that "Masterphone Talking Machine Co." was a mere trade name used by said corporation for the purpose and with the effect of misleading its customers into believing it engaged in manufacturing;
- (b) Falsely represented that (1) said printed instruments were merely orders for machines to be sent on approval; (2) its advertising and service campaign would of itself sell the machines; (3) its agents would personally canvass retail merchants' trade and lend personal service in a selling campaign; (4) if customers failed to sell the machines so ordered, the corporation would return their money; and (5) customers took no risk and could not lose on the transaction;
- (c) Misrepresented (1) the kind and quality of the machines, (2) their purchase price and terms of payment; (3) the amount, quality, and character of advertising matter and advertising service furnished; and (4) terms and conditions under which the machines would be taken back;
- (d) Published and circulated among customers, as a part of its plan for securing the signatures to said printed instruments, a catalogue containing a cut representing a manufacturing plant, together with the words "Home of the Masterphone, Adrian, Mich.," for the purpose and with a tendency and capacity to mislead said customers into believing that the corporation manufactured the machines sold by it, the fact being that it did not manufacture, and did not own, lease, occupy or operate the plant represented; With the effect that, as a result of the various misrepresentations above set forth, said corporation continuously secured signatures of customers to said printed instruments;
- (e) Stated to customers seeking to cancel their contracts that such action was impossible because commissions had been paid agents and printing charges incurred, which statements were false; and

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(7) Acting in collusion with, and using the name of, a third party, wrote such customers that the promissory notes were now in the hands of an innocent third party for value, and that payment thereof was demanded under penalty of suit, and thereby enforced the provisions of said printed instruments, and deceived customers into acquiescence therein, the fact being that the notes in the hands of said third party were subject to the same defenses by the maker as though they had remained in the hands of the payee:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Boston Piano & Music 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. The respondent is now, and for more than two years last past has been, a corporation duly organized and existing under and by virtue of the laws of the State of Iowa, with its principal office and place of business at Iowa City, in said State, and engaged in the business of buying, selling, and shipping talking machines and talking-machine records generally in commerce to retail merchants located in the various States of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. The respondent in carrying on its business, purchases talking machines with the name "Masterphone" imprinted thereon and talking-machine records from manufacturers thereof, and under the trade name Masterphone Talking Machine Co. sells and ships the machines and records so purchased and certain advertising matter to be used in advertising the same to various retail merchants located in numerous States of the United States. That respondent is now, and for more than two years last past has been, negotiating, effecting, and consummating such sales and shipments as the result, and by the use of, a sales plan consisting of false representations, fraudulent schemes, devices, and practices, among which are the following:

Respondent employs numerous traveling salesmen, who travel throughout the various States, calling upon retail merchants and soliciting orders for respondent's machines, records, and advertising

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matter. Respondent supplies its salesmen with printed forms that appear to be orders or offers to purchase, but which, in fact, are, when signed by the prospective purchaser and the respondent's salesman, written contracts. Such contracts contain, among other things, a detailed description of the kind, quality, and dimensions of the machine, the number and kind of records, and the quantity and character of advertising matter and advertising service to be furnished by the respondent thereunder; a statement of the amount of the purchase price and the terms of payment thereof; the price, terms, and conditions under which subsequent purchases may be made; an enumeration of various acts agreed to be performed by the parties thereto; and recitals to the effect that any changes of the printed contract to be binding on the respondent must appear in writing thereon; that all of the terms and conditions under which the machines and records are purchased appear therein, and that the purchaser has read and understands the same.

Respondent's salesmen, with the knowledge, acquiescence, and active cooperation of respondent, its officers, and employees, and for the purpose and with the effect of selling respondent's machines, records, and advertising matter, and inducing purchasers thereof to sign such contracts without reading or understanding the nature, terms, and conditions thereof, misrepresent, among other things, the kind, quality, and dimensions of respondent's machines, the quantity and character of the advertising matter and advertising service that will be furnished by respondent to purchasers thereof, the amount of the purchase price and the terms of payment thereof, the price at and the terms under which subsequent purchases may be made, the various acts to be performed by the respondent and said purchasers; and falsely represent, among other things, that such printed forms are merely orders, and that the machines ordered therein would be sent on approval, that respondent operates its own factory and manufactures the machines sold by it, that the purchaser can lose no money on the transaction, that respondent's machines are better than the standard makes of machines, and that dealers are abandoning the sale of Victor, Edison, and other standard talking machines and engaging in the sale of respondent's; that such purchasers will be granted the exclusive selling rights for their respective territories, that the kinds, quality, and value of the machines, records, advertising matter, and advertising service to be sold are as described and the purchase price is as stated by such salesman, that respondent will conduct an advertising campaign that will in itself sell the machines for the purchaser, and that such salesman will return and lend his personal aid in a selling campaign.

That the effects, among other effects, produced by respondent's acts in negotiating, effecting, and consummating the sale of its talking machines in the manner hereinbefore described is to stifle and suppress competition in the sale and shipment of talking machines in interstate commerce and to deceive and mislead purchasers and prospective purchasers of such talking machines.

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

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

The respondent having entered its appearance by its attorney, and having filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, before John R. Dowlan, an examiner of the Federal Trade Commission, theretofore duly appointed, the respondent appearing before said examiner, but declining to introduce evidence in denial thereof.

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

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized and existing under and by virtue of the laws of the State of Iowa, having its principal office and place of business located at the city of Iowa City, in said State, and is now, and since April, 1917, has been, engaged in the business of purchasing talking machines from the Manophone Corporation, of Adrian, Mich.; the Vitanola Talking Machine Co., of Chicago, Ill., and the Knittel Co., of Quincy, Ill., and in selling and shipping said talking machines, together with certain talking machine records and advertising matter, in interstate commerce, to purchasers thereof, located throughout the different States of the United States, in direct competition with other persons, firms, co-partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the conduct of its business, is now, and since April, 1917, has been, selling and shipping to retail merchants located throughout the different States of the United States its talking machines, talking-machine records, and advertising matter by the use and as the result of a sales plan or scheme conceived and

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devised by respondent; that respondent, as a part of said sales plan or scheme, employed agents who, acting within the scope of their employment, traveled throughout the different States of the United States and secured signatures of said retail merchants to certain printed instruments supplied said agents by respondent; that said printed instruments consisted of one paper, part of which consisted of a form of contract and part of which consisted of a form of promissory note; that said printed instruments are hereinafter referred to and designated "printed instruments"; that said "printed instruments" are identical with or similar to Commission's Exhibits Nos. 1 and 15, in evidence in the record herein.

PAR. 3. That the "printed instruments" designed and used by respondent in the conduct of its business, as aforesaid, are falsely and deceptively worded and are surrounded with language that conceals and covers the real meaning, character, nature, and effect of said "printed instruments"; that said respondent, through the acts of its agents acting within the scope of their employment, has continuously secured signatures to said "printed instruments" as the result of the deceptive and misleading character and nature of said "printed instruments" and as the result of false and misleading statements and representations of its said agents concerning the character, nature, terms, and provisions of said "printed instruments."

PAR. 4. That respondent, for the purpose and with the intent of deceiving and misleading retail merchants into signing "printed instruments," printed or caused to be printed and appear in large type on the parts of said "printed instruments" constituting forms of contracts the word "order"; that said "printed instruments" constituting forms of contracts are not orders; that the word "order" appearing in said "printed instruments" is false and misleading and has resulted in deceiving and misleading said retail merchants and has enabled respondent to secure signatures of said retail merchants to said "printed instruments."

PAR. 5. That the respondent, for the purpose and with the intent of deceiving and misleading retail merchants into signing "printed instruments," printed or caused to be printed and appear in large type on the parts of said "printed instruments," constituting forms of contracts, the following statement or representation—

Masterphone Talking Machine Co., owned and operated by Boston Piano & Music Co., Inc.—

which statement or misrepresentation is misleading and has resulted in leading said retail merchants to believe that respondent was engaged in manufacturing talking machines, whereas, in truth and in

fact, respondent has never manufactured talking machines, and in truth and in fact the "Masterphone Talking Machine Co." is not a company operated by respondent, but is a mere trade name used by respondent for the purpose and with the intent as aforesaid.

PAR. 6. That the respondent, for the purpose and with the intent of deceiving and misleading retail merchants into signing "printed instruments," is now, and since April, 1917, has been, publishing and circulating among retail merchants catalogues in which appeared a certain cut or picture representing a manufacturing plant, and in which appeared the following statement or representation: "Home of the Masterphone, Adrian, Mich.;" that said cut or picture, and statement or representation are designed and calculated, and have a tendency and capacity to deceive and mislead said retail merchants into believing that respondent manufactured the talking machines sold by it, whereas, in truth and in fact, respondent, during the time in which it published and circulated said catalogues, had no manufacturing plant and did not manufacture talking machines and did not own, lease, occupy, or operate the manufacturing plant represented and indicated by said cut or picture, and in truth and in fact the word "Masterphone" is a mere trade name, imprinted or stenciled on talking machines purchased by respondent from independent manufacturers thereof.

PAR. 7. That respondent's agents, acting within the scope of their employment, and with the knowledge, acquiescence, and support of respondent, have continuously secured signatures of retail merchants to "printed instruments" as the result of the following statements and representations, all of which were, in truth and in fact, false, misleading, and deceptive; that "printed instruments" were merely orders and that talking machines ordered therein would be sent on approval and could be returned if not satisfactory; that respondent's advertising and service campaign would itself sell talking machines; that respondent's agents would personally canvass retail merchant's trade and lend personal service in a selling campaign; that if retail merchants failed to sell talking machines ordered under "printed instruments," respondent would return the money paid for same; that retail merchants took absolutely no risk and could not lose money on the transaction.

PAR. 8. That respondent's agents, acting within the scope of their employment, and with the knowledge, acquiescence, and support of respondent, have continuously secured signatures of retail merchants to respondent's "printed instruments" as the result of false and misleading statements and representations concerning (a) the kinds

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and quality of respondent's talking machines; (b) the purchase price and the terms of payment of respondent's talking machines; (c) the amount, the quality, and the character of the advertising matter and the advertising service respondent furnishes; (d) the terms and the conditions under which respondent will repurchase or buy back talking machines.

PAR. 9. That the respondent, as a part of its sales plan, after receiving the executed "printed instruments," detached that part thereof which constituted the promissory notes and delivered them to one O. A. Byington, whose office is on the same floor of the same building as that of respondent, under pretence of sale for valuable consideration; that O. A. Byington knew the methods and pretences by which the execution of said notes was procured and that the notes in his hands were subject to the same defenses by the maker as though they had remained in the hands of the payee.

PAR. 10. That by agreement between Byington and the respondent, the latter was responsible to Byington for the notes if and when actually discounted by the said Byington and the respondent was permitted by Byington to act in Byington's name and stead for the purpose of enforcing payment of such notes by the makers thereof; that pursuant to such agreement it was the practice of the respondent by its president to write letters to retail merchants who desired to cancel their contracts, stating that the cancellation of the contract was impossible because commissions had been paid to the agent thereon and printing charges incurred, which statements were false, and in conjunction therewith to write to the same merchants letters signed with the name of O. A. Byington and purporting to be expressions by him as a holder of the merchants' notes, for value and without notice of any defects therein or defenses thereto, in which payment was demanded under penalty of suit, which letters were false representations made by the respondent company; that as a result of such false representations respondent enforced the provisions of its said "printed instruments" and deceived its customers into an acquiescence therein.

## CONCLUSIONS.

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

## Order.

## ORDER TO CEASE AND DESIST.

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

*It is now ordered*, That the respondent, Boston Piano & Music Co., and its officers, representatives, agents, servants, and employees, do cease and desist from directly or indirectly:

(1) Using any instrument or document or instruments or documents identical with or similar to those it made use of in negotiating and consummating sales of its talking machines, talking-machine records, and advertising matter without fully explaining to purchasers the true nature, character, terms, and conditions thereof.

(2) Defrauding or misleading or attempting to defraud or mislead purchasers by making any false or misleading oral statement or representation, or by circulating any false or misleading statement or representation, in any letter, advertisement, catalogue, or any other printed matter whatsoever; (a) concerning the terms or the conditions or the provisions of any contract, order, note, or other instrument used by respondent in negotiating and consummating the sales of its talking machines; (b) concerning the purchase price or the terms of payment of the kind or the quality of the respondent's talking machines; (c) concerning the amount or the quality or the character of respondent's advertising matter and advertising service; (d) that respondent is engaged in the business of manufacturing talking machines or that conveys the impression that respondent is engaged in the business of manufacturing talking machines.

(3) Defrauding or misleading or attempting to defraud or mislead purchasers by writing, sending forth, or forwarding, as the agent of, or on behalf of, any person or persons any letter or other communication containing any false, misleading, or deceptive statement or representation.

(4) Using cuts or prints or pictures in advertisements, catalogues, letterheads, or other printed matter whatsoever, wherein respondent represents to purchasers or leads purchasers to believe that respondent is engaged in the business of manufacturing talking machines.

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



FEDERAL TRADE COMMISSION  
*v.*  
ATLANTIC REFINING COMPANY.

Docket 131.—December 31, 1920.

ORDER OF RESCISSION.

WHEREAS a complaint was heretofore, to wit, on the 13th day of May, 1918, issued by the Federal Trade Commission against the respondent named above, charging certain violations 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 charging further that the respondent has violated 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," and

WHEREAS testimony was taken in said cause, and it appears that the complaint should have been amended in order to conform to the evidence and that such action was not taken: It is, therefore,

*Ordered*, That the findings and conclusions and the order to cease and desist, dated April 27, 1920,\* in the above-entitled cause be, and the same are hereby, rescinded and vacated.

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\* See II F. T. C. 357.

## Syllabus.

FEDERAL TRADE COMMISSION  
v.  
AMERICAN MUTUAL SEED COMPANY.

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

Docket 533—January 8, 1921.

## SYLLABUS.

Where a corporation dealing in farm and grass seeds, chiefly on the mail-order plan, with the effect of misleading the public and embarrassing competitors in the conduct of their business,

- (a) Falsely advertised that all its seed was of high germination;
- (b) Advertised that all its seed was thoroughly re-cleaned, and free from dirt and weed seeds, especially the seed of noxious weeds; that it had installed in its plant cleaning machinery and equipment of standard design, by the proper and careful use of which weed seed, dirt, and other foreign matter might be removed from seed so that it would meet the requirements of pure-seed laws; the fact being that such seed did contain considerable quantities of weed seed, including noxious weeds, as well as dirt and other foreign matter, and had not been cleaned of seed impurities;
- (c) Advertised its seed-testing laboratory, together with a picture thereof, and made the false and misleading claims with reference to the testing of its seed that (1) every lot of seed sent out was subject to a careful purity and germination test; (2) every bag must come up to its standard of purity and germination before being shipped; (3) a purchaser knew before sowing its seed that it would produce results, and there was no guesswork about such seed; and (4) its seed-testing laboratory was in charge of an expert seed analyst;
- (d) Advertised that every bag of seed shipped was tagged to show the purity and germination thereof and that full information was given with every bag, which claims were false and misleading;
- (e) Advertised three grades of seed, namely, "Pinnacle brand" (extra fancy), "Universal brand" (fancy), and "Economy brand" (choice), and made for these brands varying claims of excellence, the fact being that samples of each brand showed on analysis weed seed and other impurities, including in many instances the seed of noxious weeds, and notwithstanding the fact that it had established no standards of purity for its three grades, analysis of "Economy brand" showing the samples to be the equal of "Pinnacle brand";
- (f) Advertised and sold, under the brand names above set forth, clover seed of various kinds, claiming that (1) its clover seed could not be surpassed for purity, vitality, hardiness, stooling qualities, and germination; (2) its cleaning and grading machinery made it possible to furnish the best clover seed that could be bought; and (3) clover seed bought from it eliminated middlemen's profits; which claims were false and misleading;

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- (g) Advertised and sold, under the brand names above set forth, alfalfa seed, claiming that (1) its seed stock was grown exclusively for it in the Northwest and its buyers were sent into those sections, where the seed reached its highest perfection, and the entire output of the whole community was bought; (2) its standard grades of alfalfa were invariably Nebraska grown; (3) it bought no alfalfa seed after it had reached the terminal market, but secured it direct from the grower so that it knew exactly what was being furnished; and (4) it furnished seed direct from the growers; which claims were false and misleading;
- (h) Advertised and sold, under the brand names above set forth, timothy seed, claiming that (1) seed which no other seed firm could procure was offered; (2) every pound in stock was new-crop seed; (3) it was especially well situated to furnish the best seed that could be obtained at the very lowest price; and (4) while its "Pinnacle brand" was the best in the market, its "Economy brand" was choice seed and, though containing more hulled seed, germinated just as well and was especially recommended; which claims were false and misleading;
- (i) Advertised and sold certain mixtures of grass seed as alsike and timothy mixed; clover, alsike, and timothy mixed; and red clover and timothy mixed, claiming (1) a much higher proportion of alsike, much the more expensive ingredient, for its alsike and timothy mixture than was actually the case; and described said mixture as alsike and timothy, notwithstanding the generally recognized practice in the seed trade of putting first in a seed mixture the name of the ingredient which predominated; the fact being that all of the grass-seed mixtures above referred to contained large percentages of the seed of various kinds of weeds, and other impurities, and particularly the seed of noxious weeds, and that samples showed on analysis a low germinating power;
- (j) Failed to advise customers that its seed was low grade or that it mixed high-grade and low-grade seeds, or that certain of its seed contained noxious weeds, but on the contrary claimed that its seed was high grade, thoroughly re-cleaned, and free from noxious weed seeds and, with reference to certain varieties, was the best that could be obtained;
- (k) Used envelopes to send out samples of seed, on which envelopes were printed statements to the effect that (1) all its brands had been thoroughly re-cleaned; (2) its "Pinnacle brand" was equal if not superior to any other seed on the market; (3) its "Universal brand" contained no bad weed seed; and (4) its "Economy brand" contained no dangerous weed seed; all of which statements were false and misleading;

*Held*, That such acts, and each of them, under the circumstances set forth, constituted unfair methods of competition.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the American Mutual 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 Com-

mission, 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 American Mutual Seed Co., is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago 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 Illinois, 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 Illinois through and into various other States of the United States and the Territories thereof.

PAR. 2. That said respondent, in the course of its 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 all seeds sold by respondent are sold subject to State and National test and every lot of seed is sampled and subjected to a germination and purity test before it is sent out, so that it is known just what respondent sends to its customers; that respondent has the most modern machinery for cleaning and grading seeds, which machinery not only takes out the dirt and weed seeds, but the light, small, and inferior seeds as well; that respondent's seed stock is grown exclusively for it, and that some of the largest growers of seeds send to respondent their entire crop, whereas respondent procures its supply of seeds from indiscriminate seed growers and some from other dealers of seeds who furnish to respondent the cheaper, inferior, and rejected grades of seed, and respondent has become an outlet for the marketing of low-grade, inferior seeds, which contain large quantities of seeds of noxious weeds which overrun the land in the vicinity in which the seeds are planted and are very difficult to eradicate.

Findings.

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

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

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

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, American Mutual Seed Co., is and was at all times herein mentioned a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago in said State.

PAR. 2. That respondent was organized in the year 1915 and ever since has been engaged in the business of dealing in farm and grass seed at Chicago, Ill., aforesaid, purchasing its seed from growers and dealers in various States, causing the same to be transported from within and without the State of Illinois to the city of Chicago, and reselling and shipping 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 circulating throughout the United States annual catalogues and other advertising matter 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.

PAR. 4. That for more than one year last past, and specifically in its catalogue published for the year 1919, and other advertising matter 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 sale 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 its 1919 catalogue respondent 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 shown by analyses made of various samples of respondent's seed by the State seed analyses of the States of Wisconsin and New York, these analyses in some cases showing germination tests as low as 48 and 72 per cent.

PAR. 6. That in its 1919 catalogue and its other advertising matter, respondent repeatedly calls attention to the alleged fact that its seed is all thoroughly recleaned and is free from dirt and weed seeds, including in particular the seed of what are declared to be noxious or dangerous weeds by the pure-seed laws of many of the States; that these 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 dirt and other foreign matter, and had not been cleaned of all these impurities as claimed by respondent; that an officer of respondent admitted selling seed to its customers containing the seed of noxious or dangerous weeds.

PAR. 7. That respondent has installed in its plant cleaning machinery and equipment of standard design similar to that possessed by other companies in the seed business; that by the proper and careful use of this type of machinery, weed seed, dirt, and other foreign matter may be removed from seed so that it will meet the requirements of the pure-seed laws of the several States; that respondent did not properly clean all its seed sold to its customers as shown by analyses of shipments by respondent into certain States, made by the seed analysts of said States, such analyses showing the presence of dirt and of many kinds of weed seeds, including noxious or dangerous weeds, and in certain instances said noxious weeds being found in quantities sufficient to condemn the seed for sale in said States.

PAR. 8. That in its 1919 catalogue respondent calls attention to its seed-testing laboratory, showing a picture of same, and makes various claims regarding the testing of its seed, among such statements being the following: That every lot of seed it sends out is subject to a certain purity and germination test; that every bag must come up to its standard of purity and germination before being shipped; that a purchaser from it knows before sowing its seed that it will produce results, and that there is no guesswork about its seed; that its seed-testing laboratory is in charge of an expert seed analyst; that these statements were and are false and misleading in that respondent has no recognized standard of purity and germination

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for its seed, and in many cases purchased seed from other seed companies and sent said seed out to its customers without making a purity and germination test of it; that from February, 1919, until the summer of 1919, and particularly during the seed-selling season, respondent was without the services of a seed analyst and relied on a casual inspection of the seed it purchased from growers, and, where available, on the analyses furnished with the seed it purchased from other seed companies to determine the purity and germination of the seed it sold its customers; that at no time during the period when it was without the services of a seed analyst did it notify its customers or prospective customers of that fact; that during this period respondent did not know the purity or germination value of its seed, or what the results would be to its customers from sowing seed bought from it.

PAR. 9. That in its 1919 catalogue respondent states that every bag of seed shipped by it carries a tag stating the purity and germination of the seed; that the tag tells the percentage of seed that will germinate, the percentage of foreign matter and weed seed; that it gives full information with every bag of seed it sells; that these statements were and are false and misleading in that many of its shipments do not give any information as to the purity and germination of the seed, and in certain instances where such information is given it was found on analysis by the State seed analyst of the State into which shipped, that the information given did not accurately state the percentages of impurities present in the seed, and in no instance did the tag show the presence of noxious or dangerous weeds, as required by the State law.

PAR. 10. That respondent offers for sale three grades of seed, which it calls "Pinnacle brand" (extra fancy), "Universal brand" (fancy), "Economy brand" (choice); "Pinnacle brand" being the finest grade and "Economy brand" the lowest. That it claims that all its grades have been thoroughly recleaned. That in explaining the necessity of handling more than one grade of seed, respondent, in its 1919 catalogue, states its "Pinnacle brand" is "perfection itself," and is not offered in competition with ordinary grades. That in describing its brands it states that "Pinnacle brand" is carefully graded to secure seed of uniform size, and is "hand-picked seed" and the best that grows; that "Universal brand" has been thoroughly recleaned and is one of the highest grades of seed; that "Economy brand" has been thoroughly recleaned and is the equal of many grades sold as fancy and represented to be the best. That samples of each and every one of these three brands, including different varieties of seed, have been analyzed and have been found to contain weed

seed and other impurities, and in many instances the seed of certain weeds which are declared to be noxious weeds by the pure-seed laws of the various States. That respondent has established no standards of purity for its three grades, as shown by analyses of "Economy brand," which showed the samples to be the equal of "Pinnacle brand," and analyses of "Universal brand," which showed it to contain many kinds of weeds, noxious weeds, and other impurities.

PAR. 11. That respondent has advertised and sold for more than one year last past, in interstate commerce, clover seed of various kinds, including medium red or June clover, alsike clover, mammoth clover, and sweet clover of various kinds, under the same grades and brand names as hereinbefore set forth; that it states in its 1919 catalogue with reference to its clover seed: "Our clover seed can not be surpassed for purity, strong vitality, hardiness and stooing qualities, and as all our seed has been run through the scarifying machine, no clover seed can surpass it in germination"; "Our superior cleaning and grading machinery makes it possible for us to furnish you the very best clover seed that the money will buy"; "\* \* \* when you secure it [clover] from us you get it from first hands and are not forced to pay two or three middlemen's profits." That these statements are false and misleading in that, as hereinbefore set forth, all its brands and grades do contain noxious weed seeds and other impurities. That 16 samples of clover seed shipped into the States of Wisconsin and New York by respondent were sent to the official seed analysts of said States, and were analyzed by them; that out of nine shipments into Wisconsin, eight were condemned for sale in that State because of noxious weed content in excess of that allowed by law, and the other sample showed the presence of a noxious weed; and in seven samples analyzed in New York, all contained weed seed of various kinds, in one case consisting of 22 different varieties, including in every sample, except one, the seed of weeds declared to be noxious by the pure-seed law of said State. That respondent buys a large proportion of its clover seed from other seed companies and not direct from the grower.

PAR. 12. That respondent has advertised and sold for more than one year last past in interstate commerce, alfalfa seed, under the same grades and brand names as hereinbefore set forth; that it states in its 1919 catalogue, with reference to alfalfa seed: "Our seed stock is grown exclusively for us in the Northwest; \* \* \* we send our buyers right into those sections where alfalfa seed is grown in the highest state of perfection, and buy the entire output of the whole community, \* \* \*"; "Our standard grades of alfalfa are invariably Nebraska grown \* \* \*"; "We buy no alfalfa seed after



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it has reached the terminal market, but secure it direct from the grower, and then we know just what we are furnishing you". "We furnish you your seed direct from the growers." That all these statements are false and misleading in that its alfalfa seed is not grown exclusively for it in the Northwest, but such as it obtained from that section is bought by it on the open market in competition with other seed companies, and it does not buy the entire output of a community as alleged by it; that respondent's so-called standard grades of alfalfa are not all grown in Nebraska, as admitted by respondent's secretary, but, in fact, during 1919 only a very small portion of its standard grade alfalfa seed came from Nebraska; that the terminal market for alfalfa seed is Kansas City, and respondent purchased large quantities of alfalfa from dealers in said city; that it does not secure all its alfalfa direct from the growers as alleged by it, as it purchased a large proportion of its alfalfa requirements from other seed companies, and does not know in many instances where the seed is grown. That a sample of Grimm alfalfa taken from a shipment made by respondent to a purchaser in Wisconsin bore a label giving the purity as 99.5 per cent and germination 90 per cent; on analysis by the State seed analyst it was found to be 96.8 per cent purity, germination 82 per cent, and contained the seeds of weeds declared by the State law to be noxious in sufficient quantities to condemn the shipment for sale in Wisconsin; that three samples of alfalfa seed sent to prospective purchasers in the State of New York by respondent, marked "Pinnacle brand," "Universal brand," and "Economy brand," were analyzed by the State seed analyst of said State; the "Pinnacle brand" and "Economy brand" were found to contain the seed of a weed considered troublesome under the State law, and the "Universal brand" contained the seed of four different weeds, three of which are considered noxious weeds under the pure-seed law of said State.

PAR. 13. That respondent has advertised and sold for more than one year, last past in interstate commerce, timothy seed under the same grades and brand names as hereinbefore set forth; that it states in its 1919 catalogue with reference to timothy seed: "We \* \* \* offer you seed which no other seed firm can procure \* \* \*"; "Every pound of timothy which we have in stock is new crop seed \* \* \* we are especially well favored to furnish you the best timothy seed to be obtained, and at the very lowest prices;" "Our 'Pinnacle brand' is the best that is in the market, our 'Economy brand' is choice seed, but contains more hulled seed \* \* \*, but it germinates just as good, and we can especially recommend the seed to you." That all these statements are false and misleading in that

respondent is not able to obtain superior qualities of timothy seed than other seed companies; that all of respondent's timothy seed is not new crop seed, as it purchases large quantities of timothy from other seed companies, and does not know in every instance that this seed is new crop seed; that respondent does not handle exclusively the best timothy seed to be obtained; that respondent's timothy seed contains weed seed and other impurities, as shown by certain samples shipped into the States of Wisconsin and New York by respondent and analyzed by the official seed analysts of said States; one shipment into Wisconsin on analysis was shown to contain the seeds of a weed considered noxious under the State law in a quantity sufficient to condemn the sale of said seed in that State; two samples shipped into New York marked "Pinnacle brand" and "Economy brand" were analyzed; the "Pinnacle brand" contained the seeds of two weeds considered troublesome by the seed law of the State, and the "Economy brand" contained the seeds of eight different varieties of weeds, including one noxious weed and two different varieties of crop seeds.

PAR. 14. 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; clover, alsike, and timothy mixed; red clover and timothy mixed; that respondent does not sell said mixtures under the various grades and brand names under which it sells its other grass seeds, as hereinbefore set forth, but only sells one grade of these seed mixtures; that alsike clover seed costs two to four times as much as timothy seed; that respondent in its 1919 catalogue states its alsike and timothy mixed is bought in the country and contains about one-third alsike and two-thirds timothy. That said statements are false and misleading in that its alsike and timothy mixture does not contain one-third alsike seed, but, in fact, contains generally only from 5 to 8 per cent alsike; that a very small proportion, if any, of its alsike and timothy mixture is purchased in the country as represented by respondent, but that in 1919, or in preparation for the 1919 seed season, respondent purchased about 900,000 pounds of this mixture from other seed companies, of which only 15,852 pounds was high-grade seed; that said grass-seed mixtures all contained in large percentage the seed of various kinds of weeds, and other impurities, and particularly the seed of noxious weeds, often in quantities sufficient to condemn the seed for sale in the State into which it was shipped; that the secretary of respondent company admitted buying a large quantity of low-grade alsike and timothy mixed seed in 1919, which was sold to its customers, and that respondent had considerable trouble because of its quality. That 17 samples of mixed seed of the varieties named above, from shipments

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made by respondent to purchasers in the States of Wisconsin 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 79.5 per cent, germinating power of the various crop seed comprising the mixture generally low, in one instance being 48 per cent, foreign seed of various kinds amounting to as much as 15 per cent, including various kinds of weed seed, ranging from 15 to 33 different varieties, and from 3.75 to 6 per cent inert matter; that in every sample analyzed the seed of weeds considered noxious under the pure-seed laws of the above-mentioned States were found present, in many cases in quantities beyond that allowed by the State laws, and as a consequence the shipments in such cases were condemned for sale in said States. That it is generally recognized in the seed trade in describing a seed mixture, that the kind of seed of which a preponderance is present in the mixture, shall be the name first mentioned in describing said mixture, i. e., if there is a larger percentage of timothy in a mixture than there is of alsike, said mixture would be called timothy and alsike mixed, or vice versa; that respondent calls its mixture alsike and timothy mixed, and said mixture only contains from 5 to 8 per cent alsike, as shown by analyses hereinbefore referred to.

PAR. 15. That respondent purchases large quantities of various kinds of grass seed from other seed companies, which seed is low grade in quality, and resells said seed to its customers; that respondent admits mixing high-grade seed with low-grade seed and selling said mixture as its intermediate grade; that respondent admits buying seed containing the seed of noxious weeds and reselling said seed to its customers; that respondent did not notify its customers and prospective customers that its said seed was low grade, nor that it mixed its high-grade seed and low-grade seed, nor that certain of its seed contained noxious weeds, but on the contrary claimed in its catalogue and other advertising matter that said seed was high grade, thoroughly re-cleaned, and free from noxious or dangerous weed seed, and with reference to certain varieties claimed that it was the best seed to be obtained anywhere.

PAR. 16. That respondent uses certain envelopes to send out samples of its seed to prospective purchasers; that said envelopes have printed on them descriptive matter, being generally the same for each variety of seed, but differing as to its several brands; that it states on these envelopes that all its brands have been carefully and thoroughly re-cleaned, that its "Pinnacle brand" is equal if not superior to any other seed on the market, that its "Universal brand" contains no bad weed seed, and that its "Economy brand" contains

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no dangerous weed seed; that all these statements were and are false and misleading in that analyses of samples of each of these brands including various kinds of grass seed have shown said seed not to be thoroughly and carefully re-cleaned, and to contain many kinds of weed seed, including noxious or dangerous weeds of different varieties.

PAR. 17. 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.

PAR. 18. That the effect of the misrepresentations above set forth is to mislead the public and to embarrass 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 16, 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.

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

*It is ordered,* That the respondent, American Mutual Seed Co., its officers, agents, representatives, servants, and employees, cease and desist from:

Publishing or circulating any catalogs or other advertising or descriptive matter containing false or misleading statements as to the character or quality of the seed sold by it, and more specifically any false and misleading statements concerning:

(a) The freedom of respondent's seed from noxious weed seed or other impurities.

(b) The germinating qualities of respondent's seed.

(c) The method of testing its seed for purity and germination.

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(d) The manner in which respondent marks or tags shipments of its seed.

(e) The place where any of its seed are grown.

(f) The source from which respondent obtains its seed.

(g) Its ability to secure and offer for sale seed superior to that offered by others.

(h) The quantity or quality of the constituent elements of any of respondent's seed mixtures.

*And it is further ordered,* That respondent, American Mutual 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.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## WINSTED HOSIERY COMPANY.\*

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

Docket 214.—January 14, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of knit underwear, in competition with manufacturers and importers of underwear composed wholly of wool, and also with manufacturers and importers of underwear composed partly of cotton, who either correctly branded and labeled their underwear with reference to composition or failed to brand and label the same at all in that respect; branded, labeled, advertised and sold certain lines of its underwear not composed wholly of wool, but the fabric of which, due to its manufacture from "wool-spun" yarns composed of cotton and wool, was soft and woolly, as "Men's Natural Merino Shirts," "Men's Gray Wool Shirts," "Men's Natural Worsted Shirts," "Australlian Wool Shirts," and "Men's Natural Wool Shirts," and thereby misled a substantial part of the purchasing public into believing that such goods were all wool, and also tended to encourage and aid representations to consumers to that effect by ignorant or unscrupulous retailers and sales people:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the 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

\* Modified and new findings. See footnote on pp. 190, 191, and original findings in II F. T. C. 202 *et seq.*

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, MODIFIED AND NEW FINDINGS AS TO THE FACTS, AND RECOMMENDED MODIFIED ORDER.\*

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent charging it with the use of unfair

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\* United States Circuit Court of Appeals for the second circuit.

Winsted Hosiery Company, petitioner, v. Federal Trade Commission, respondent. The petitioner, Winsted Hosiery Co., having filed in this court, under the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to

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

The respondent having entered its appearance by its attorney, and filed its answer herein, a statement of facts was agreed upon by counsel for the Commission and for the respondent, to be taken in lieu of evidence, and findings of fact and conclusion were thereupon adopted by the Commission and an order made thereon, dated January 29, 1920, that the respondent cease and desist from using certain labels alleged in the complaint herein, except as provided in said order; thereafter the respondent, by its attorneys, filed with the United States Circuit Court of Appeals, Second Circuit, a petition to review said order as provided by law, and notice of the same was duly served upon the Commission; thereafter application was made on behalf of the Commission to the said court for permission to take additional evidence, under the provisions of section 5 of the act of Congress approved September 26, 1914, and by an order dated October 18, 1920, the motion was granted and ninety days was allowed within which to take such evidence; such additional evidence thereafter having been introduced in support of the allegations of said complaint before Mr. James McKeag, an examiner of the Federal Trade Commission, theretofore duly appointed, and an opportunity having been given to the respondent to introduce evidence on its behalf, and respondent, by its attorneys, having rested without the taking of evidence.

Now, in accordance with the provisions of section 5 of the act of Congress approved September 26, 1914, the Commission having duly considered the record, and being now fully advised in the premises, modifies its findings as to the facts, as previously adopted, and makes new findings by reason of the additional evidence, constituting all its findings of facts herein, as follows:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Winsted Hosiery Co., is and has been for the last 20 years a corporation duly incorporated under the

create a Federal Trade Commission, to define its powers and duties, and for other purposes," a written petition for review of an order issued by the Federal Trade Commission, the respondent herein, directing the petitioner to cease and desist from the use of certain labels on underwear manufactured by it, and the Federal Trade Commission, under another provision of said act, having applied to this court for leave to adduce additional evidence and such leave having been granted by an order dated October 18, 1920, as follows: "A motion having been made herein by counsel for the respondent to remand this proceeding for the purpose of taking further testimony: Upon consideration thereof it is ordered that said motion be and hereby is granted, the respondent to have 90 days from the date hereof within which to take such evidence"; and additional evidence having been taken by respondent in pursuance of said order, now the respondent, the Federal Trade Commission, makes return of such additional evidence to this court and files therewith its modified and new findings of facts and its recommendation for the modification of its original order, as hereto attached:

By the Commission:

[SEAL.] (Signed)  
Dated this 14th day of January, A. D. 1921.

HUSTON THOMPSON, *Chairman.*

Attest:

(Signed)

J. P. YODER, *Secretary.*



laws of the State of Connecticut, and is and has been during that time engaged in the manufacture of knit underwear, shirts and drawers, and hosiery, having its principal place of business and factory at Winstead, Conn., and a branch factory at Norfolk, Conn., and one at Unionville, Conn.; the respondent for more than 10 years has sold, and now sells, its products of knit underwear, including men's shirts and drawers, throughout various States of the United States, and has conducted its business of manufacture and sale, as above described, in competition with other persons, firms, and corporations similarly engaged.

PAR. 2. The respondent in the conduct of its business, as stated in paragraph 1, has for more than 10 years prior to October 30, 1918, the date of the issuance of the complaint herein, sold and shipped its products, namely, knit underwear, to purchasers thereof located in different States of the United States; and during the time named there has been a constant trade and commerce in such products between and among various States of the United States. For the three years prior to October 31, 1918, the respondent's sales of its products of knit underwear aggregated \$2,500,000.

PAR. 3. Respondent admits by its answer that for more than one year prior to January, 1919, it has in the conduct of its business manufactured and sold in commerce (as set forth in the complaint herein) and labeled, advertised, and branded certain lines of underwear as "Men's Natural Merino Shirts," "Men's Gray Wool Shirts," "Men's Natural Worsted Shirts," "Australian Wool Shirts," and "Men's Natural Wool Shirts," and that such underwear is not composed wholly of wool.

PAR. 4. The methods employed by the respondent in labeling, advertising, and branding its product are effective to carry both to the retailer and the ultimate consumer thereof, the representation that such garments were composed wholly of wool, and in the absence of technical knowledge in either the retailer or the consumer tended to create the belief that such garments were, in fact, wholly composed of wool.

PAR. 5. During the period of more than five years prior to October 30, 1918, labels bearing the various legends set out in paragraph 3 have been pasted on or attached by respondent to the boxes in which it sold and delivered to its customers underwear manufactured by it; said labels also bore respondent's trade-mark, consisting of the words "Winsted Hosiery Company" in a circle.

PAR. 6. The underwear so labeled, advertised, and sold, as set forth in paragraphs 3 and 5, was not composed wholly of wool, being part

wool and part cotton, the percentage of wool therein varying generally from 25 per cent to 80 per cent, and in some cases being as low as 10 per cent; as a rule, for the underwear containing 50 per cent or less of wool respondent has used labels containing the word "Merino," and on those containing more than 50 per cent of wool labels containing the word "Wool."

PAR. 7. The percentage of wool in the underwear manufactured by respondent and sold under the labels stated above, varied from time to time according to the relative cost of wool and cotton and according to the loss in the process of fulling, the latter extending to 5 per cent. Respondent has not put any all-wool underwear on the market for a good many years.

PAR. 8. Respondent sells its product of underwear to retailers.

PAR. 9. Respondent's boxes containing its underwear, labeled as set forth in paragraph 3, have been customarily placed by purchasers, namely, retailers, on their shelves, exposing said labels to the view of their customers, and retailers and their salesmen have sold the contents from the boxes so labeled to the public.

PAR. 10. The word "merino" means primarily and popularly a breed of sheep whose fleece is a fine long-staple wool, and as applied to wool it signifies the fleece of that sheep or a grade corresponding to it in quality. It is so used commercially in the wool trade and commands the highest price.

The noun "wool" means the fleece or coat of the domesticated sheep, and as an adjective the word means "made of wool."

"Worsted" means primarily and popularly a yarn or fabric made wholly of wool.

"Australian Wool" means primarily and popularly wool grown in Australia and is a distinct commodity in the wool and yarn markets, and is known generally as a fine grade of wool.

PAR. 11. The merino sheep, meaning a sheep of the merino blood, has been celebrated for centuries in Europe for its fine wool, and was imported into this country early in the nineteenth century, and has been conserved and bred here ever since and recognized as the sheep producing the highest grade of fine wool. It has existed and now exists in large numbers in various parts of this country.

The classification or grading of wool in the wool market is based on the standard of the wool of the merino sheep, the terms "fine," "three-fourths blood," "half-blood," etc., as grades of wool, referring primarily to full-blood, three-fourths and one-half blood, respectively, of the merino breed.

## Findings.

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PAR. 12. A substantial part of the consuming public understand the words "merino," "natural merino," "natural wool," "gray wool," "natural worsted," "Australian wool," and "gray merino" as applied to underwear to indicate all-wool underwear.

PAR. 13. Some buyers for retailers and salespeople understand the words "merino," "natural merino," "natural wool," "gray wool," "natural worsted," "Australian wool," and "gray merino," as applied to underwear to indicate all-wool underwear.

PAR. 14. Some retailers and their salesmen rely on the labels on the boxes in which they sell their underwear, including respondent's, such as "Merino," "Natural Wool," "Australian Wool," and "Gray Merino," and use them to sell underwear under such labels as all wool.

PAR. 15. The labels "Merino," "Natural Merino," "Natural Wool," "Gray Wool," "Natural Worsted," "Australian Wool," and "Gray Merino," used on garments composed partly of wool and partly of cotton, or their containers, tend to encourage and aid representations to consumers by ignorant or unscrupulous retailers and salesmen that the underwear so labeled is all wool. The pay of retail salesmen of underwear often depends in part on the amount of their sales.

PAR. 16. The labels "Natural Merino," "Natural Wool," "Gray Wool," "Natural Worsted," "Australian Wool," and "Gray Merino," as used by respondent for its underwear composed partly of wool and partly of cotton, or on the containers, are calculated to and do mislead a substantial part of the purchasing public to believe that the garments sold under such labels are all wool.

PAR. 17. The words "merino," "wool," and "worsted" as used by respondent in labels applied to their product of knit underwear severally tend to and do mislead a substantial part of the consuming public to believe that they indicate all-wool garments and into purchasing in that belief.

PAR. 18. The respondent makes and uses "wool-spun" yarns, composed of cotton and wool, in the underwear manufactured and sold by it under the labels as stated in paragraph 16, which make a soft, woolly fabric and tend to cause the purchasing public to believe that it is all wool.

PAR. 19. The terms "merino," "natural merino," and "natural wool" have been for many years used by some manufacturers as labels for underwear made entirely of cotton. The sales people of retailers can not tell from their own examination the proportions of wool and cotton in knit underwear composed partly of wool and partly of cotton.

PAR. 20. The word "merino" is used by manufacturers of yarn and knit underwear and largely by jobbers and retailers as a trade term, meaning a combination of cotton and wool. Yarns made partly of cotton and partly of wool fibres and known in the terminology of the trade as "merino" yarns are sold and billed by yarn manufacturers to underwear manufacturers as containing definitely stated percentages of cotton and wool. The term "merino" when applied in the retail trade to underwear composed partly of wool and partly of cotton is used regardless of the percentages of wool and cotton and has no definite meaning.

PAR. 21. All-wool knit underwear has been widely manufactured and sold in this country for 20 years or more under various labels, such as "All-wool," "Wool," "Natural Wool," "Random Wool," and "Pure Wool," and under trade-mark brands without any words descriptive of the composition thereof. All-wool knit underwear of domestic manufacture has constituted a substantial proportion of the total product of all-wool and wool-and-cotton underwear. According to the census of 1914, for manufacture of textiles, the latest available, the amount of all-wool knit underwear—namely, shirts and drawers—as compared with the output of such underwear made partly of cotton and partly of wool, was for the year 1914 in quantity—that is, by dozens—373,045 dozens to 1,434,504 dozens and in value \$3,448,575 to \$9,228,686 or 20 per cent approximately in quantity and 27 per cent in value of the entire product of underwear in this country composed of wool in whole or in part.

PAR. 22. All-wool knit underwear has been imported for sale into this country by various retail dealers for 20 years or more, has been sold under various labels such as "All-wool," "Wool," "Natural Wool," "Pure Wool," "Lamb's Wool," and under trade-marks, e. g., "Demophilo," "Two Steeples," and some has been so imported and sold without any label indicating its composition. Knit underwear has been imported for sale into this country for 20 years or more, composed of various percentages of cotton and wool, under the labels "Cotton and Wool," "Cotton and Wool Mixed," "Gauze Merino," "Wool and Cotton" or "Cotton and Wool," according to whether the percentage of wool or cotton present was greater or less.

PAR. 23. The knit underwear manufactured in this country consisting of cotton and wool in various percentages has been sold for 10 years or more under a variety of labels differing from respondent's as set out in paragraph 3; a large number of the total output of such garments have been made and sold by manufacturers without any label or marking describing the materials or fibers of which they

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are composed, such as cotton and wool, but under the private trademark or brand of the manufacturer or retailer alone. Manufacturers of knit underwear made partly of cotton and partly of wool have been accustomed to sell their underwear under labels in the form and language requested by their customers, and such labels include both trade-marks or brands without descriptive words and terms such as "Fine" and "Superior" in combination with the word "Underwear," without words descriptive of the composition, and fancy or coined names. Such underwear has also been sold under the labels "Cotton and Wool" and "Part Wool."

PAR. 24. Knit underwear composed partly of cotton and partly of wool, under the labels "Natural Merino," "Natural Wool," "Gray Wool," "Natural Worsted," "Australian Wool," and "Gray Merino," has been sold by respondent in competition with underwear manufactured wholly of wool, imported and domestic, and manufactured and sold under labels indicating that fact, or under some of the labels named above in this paragraph or under private trade-marks or brands alone, without descriptive terms, and in competition with knit underwear composed partly of cotton and partly of wool, imported or domestic, manufactured and sold under labels indicating such composition or under trade-marks or brands alone, without descriptive terms or under labels bearing fancy or coined names.

PAR. 25. Some retailers have ceased the use of "Merino" on underwear made partly of cotton and partly of wool since before the beginning of this proceeding, because of its uncertain, ambiguous, and misleading meaning to the public.

PAR. 26. It is the sense of the underwear industry as expressed by the American Knit Goods Manufacturers, an organization representing approximately 75 per cent of manufacturers in this country of the class of knit underwear manufactured by respondent, that the use on knit underwear composed partly of wool and partly of cotton of the words "Wool Underwear," "Worsted Underwear," "Natural Wool Underwear," "Australian Wool Underwear," and "Natural Merino," among others, are "improper," and the words "Wool and Cotton" are recommended by said association for use as labels on underwear made partly of wool and partly of cotton, and the said organization has by official action requested its members to drop the use of the word "Merino" as a label on underwear made of cotton and wool unless followed by the words "wool and cotton."

PAR. 27. It is the sense of retailers as expressed by the board of directors of the National Association of Retail Clothiers that the terms (1) "Natural Merino," (2) "Gray Wool," (3) "Natural

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Wool," (4) "Natural Worsted," (5) "Australian Wool," used as a brand or name on underwear that contained cotton or other adulterant than wool, or on the box containing such underwear, might mislead the consumer and in many instances retailers into the belief that garments so marked were not adulterated and that such misleading terms should not be used.

PAR. 28. Respondent has continuously up to the present time manufactured and sold knit underwear under the labels set out in paragraph 3, and the proportions of wool and cotton therein have not differed materially from those stated in paragraph 6.

## CONCLUSIONS.

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

## RECOMMENDED MODIFIED ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of the respondent, the statement of facts agreed upon by counsel for the Commission and respondent, and upon the additional evidence taken for the Commission under an order of the United States Circuit Court of Appeals for the Second Circuit, dated October 18, 1920, and the Commission having, by reason of such additional evidence, modified some of its original findings and adopted new findings as to the facts and adopted its conclusions that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," it now recommends the following modification of its original order to cease and desist herein, dated January 20, 1920:

*It is now ordered,* That the respondent, the Winsted Hosiery Co., its officers, agents, representatives, servants, and employees, do cease and desist from employing or using as labels or brands on underwear or other knit goods not composed wholly of wool, or on the wrappers, boxers, or other containers in which they are delivered to customers, the word "Merino," "Wool," or "Worsted," alone or in combination with any other word or words, unless accompanied by a word or

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words designating the substance, fiber, or material, other than wool, of which the garments are composed in part (e. g., "Merino, Wool, and Cotton"; "Wool and Cotton"; "Worsted, Wool and Cotton"; "Wool, Cotton and Silk"), or by a word or words otherwise clearly indicating that such underwear or other goods is not made wholly of wool (e. g., part wool).

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.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## THE TAIYO TRADING COMPANY, INC.

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

Docket 536.—January 15, 1921.

## SYLLABUS.

Where a corporation engaged in the importation and sale of Japanese safety matches, imported and sold the same in containers of the same size, shape, material and appearance as those in which Swedish and American safety matches were sold and marketed in the United States, on the labels of which containers were conspicuously impressed the distinctive and commonly used Swedish words "Sakerhetstandstikor" and "Tandstickstabiiks," and medallion designs resembling, except upon minute inspection, representations of medals awarded Swedish manufacturers of safety matches at various European expositions and by them placed upon the containers of their product, and also inconspicuously the words "Made in Nippon," but nothing prominently suggesting Japan to the ordinary American purchaser; with the natural and probable tendency to mislead the purchasing public into believing that such Japanese matches were of Swedish origin:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Taiyo Trading Co. (Inc.), hereinafter referred to as the respondent, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Taiyo Trading Co. (Inc.), is a corporation organized and 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 New York, in said State, and is now and has been since December 28, 1918, engaged in the



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sale of matches in and among the various States and Territories 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 matches manufactured in Japan, importing said matches from Japan to the said city of New York, where they are sold and shipped by the respondent to purchasers thereof; that after said matches are so imported 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 said matches 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 New York, State of New York, and therefrom to and through the other States and Territories of the United States and the District of Columbia.

PAR. 3. That now and for many years last past various brands of matches sold and used throughout the various States and Territories of the United States and the District of Columbia have been manufactured in Sweden and sold, as aforesaid, in boxes or containers of certain peculiar sizes with Swedish inscriptions thereon; that said matches by reason of their use and by reason of the Swedish inscriptions on the said containers or boxes, and by reason of the peculiar sizes of said containers or boxes, have become well known to the trade and purchasing public to be of a certain quality and to be manufactured in Sweden.

PAR. 4. That now and since the 28th day of December, 1918, the respondent with the effect of stifling and suppressing competition in the manufacture and sale of matches in interstate commerce has, in the conduct of its business, sold matches so manufactured in Japan in containers or boxes similar in size and style and material to those containing matches manufactured in Sweden, as aforesaid, and with Swedish inscriptions thereon; that such Swedish inscriptions are calculated and designed to, and do, deceive the trade and general public into the belief that the matches contained in the containers or boxes so inscribed are manufactured in Sweden, whereas in fact such matches are and have been manufactured in Japan.

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

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

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

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

**FINDINGS AS TO THE FACTS.**

**PARAGRAPH 1.** That the respondent, The Taiyo Trading Co. (Inc.), is a corporation organized and 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 New York, in said State; and is now and has been since December 28, 1918, engaged in the sale of matches in and among the various States and Territories of the United States and the District of Columbia, in direct competition with other persons, copartnerships and corporations similarly engaged.

**PAR. 2.** That now and for many years last past there have been manufactured in Sweden and sold throughout the United States, various brands of safety matches in containers or boxes of the size, shape and material generally used for such matches; that said containers or boxes in which they have been and are marketed in the United States, carry labels which ordinarily contain the certain distinctive Swedish words, "Sakerhets Tandstickor," meaning "Safety Matches," "Tandsticksfabrik," meaning "Match Factory" and "Impregnerade" meaning "Impregnated," associated with the words "Made in Sweden"; that some of the labels upon matches manufactured in Sweden and sold in the United States also bear, in addition to the distinctly Swedish words, pictorial representation in miniature of medals awarded by various European expositions indicating the place and date of such awards.

## Findings.

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PAR. 3. That the respondent, The Taiyo Trading Co., Incorporated, in the conduct of its business is now, and since December 28, 1918, has been, engaged in the importation from Japan to the city of New York, in the State of New York, of safety matches manufactured in Japan, and in the sale and shipment to purchasers thereof from the city of New York to and through the various States and Territories of the United States and the District of Columbia; that the said matches have been and are sold and marketed in the United States in containers or boxes of the same standard size, shape, and appearance as those in which Swedish and American safety matches are sold and marketed therein, with labels thereon identical, except in respect to their color, with the photostatic reproduction thereof attached hereto and incorporated herein<sup>1</sup>; that upon the labels of respondent designated "A," "B," and "D," appear in the most conspicuous position the distinctive Swedish words "Tandsticksfabrik" in combination with the name of a town in Japan expressed in English characters, Takikawa, thereby presenting to the ordinary purchaser in the United States, the appearance of one Swedish word; that at the bottom of labels "A" and "B" there appear the distinctive Swedish words "Sakerhets Tandstickor" associated with the word "Imperial" on the former and "Hughes" on the latter, while on the bottom of label "D" the distinctive Swedish words "Sakerhets Tandstickor" appear alone; that upon label "C," the words "Impregnated Safety Matches" appear at the top, while at the bottom are the distinctive Swedish words "Tandsticksfabriks" in conjunction with the name of a town in Japan expressed in English characters, Seisuisha, thereby presenting to the ordinary purchaser in the United States the appearance of one Swedish word; that upon all of these labels there appear the words "Made in Nippon," in inconspicuous positions and in type smaller than either the Swedish or English words appearing thereon, Nippon being a word not generally understood by the ordinary purchaser as designating Japan; that upon the labels "A," "B," and "D" are impressed certain medallion designs, importing medals or awards, without reference to or indicating place or date thereof, and requiring minute inspection to distinguish the same from similar representations so found, as aforesaid, on the labels of Swedish match containers or boxes; that there is no prominent appearance on any of the said labels of words or designs suggestive of Japan to the ordinary American purchaser, while the shape and appearance of the containers in conjunction with the said labels on which distinctive Swedish words so predominate are clearly suggestive of Swedish manufacture to such purchaser.

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<sup>1</sup> Not printed.

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PAR. 4. That the use of such distinctive Swedish words and other inscriptions upon the containers or boxes of the same size, shape, material, and appearance as those in which Swedish safety matches have been and are marketed and sold in the United States, for the sale of safety matches manufactured in Japan, is calculated and likely under all the circumstances, and the natural and probable tendency and effect will be, to mislead and deceive the purchasing public in the United States into the belief that the said Japanese matches are of Swedish origin and manufacture.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondent, The Taiyo Trading Co. (Inc.), and its officers, directors, agents, servants, and employees, cease and desist from the importation, sale or other distribution, in the United States of America, of matches manufactured in Japan, in boxes or other containers, with labels or inscriptions thereon bearing or including the words "Tandsticksfabriks" or "Sakerhets Tandstickor," or any other Swedish phrase or phrases, word or words, character or characters, symbol or symbols, verbal or pictorial, indicative or suggestive of Swedish origin or manufacture, on, upon, or in connection with matches made in Japan, or the labels or containers thereof.

*And it is further ordered,* That the respondent shall, within thirty days from date of service of this order, file with the Commission a

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report setting forth in detail the manner and form in which it has complied with the order of the Commission herein set forth.

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The Commission has also issued a similar order in the case of Con-saco Sales Co. (Inc.) (of New York City, Dock. 570), decided January 21, 1921, involving substantially the same facts as the preceding case.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

GEORGE D. FLOOD AND W. H. CALVERT, PARTNERS,  
STYLING THEMSELVES FLOOD & CALVERT.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 628—January 27, 1921.

## SYLLABUS.

Where a firm engaged in the sale of ship chandlery, including steward's supplies, deck, engine, and cabin supplies, gave to the captains and other employees of vessels to which they furnished supplies, valuable gifts, cash commissions, and gratuities as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that George D. Flood and W. H. Calvert, partners, styling themselves Flood & Calvert, hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate and foreign 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, George D. Flood and W. H. Calvert, partners, styling themselves Flood & Calvert, have their principal place of business at Galveston, in the State of Texas.

PAR. 2. That the respondents are engaged in the business of selling ship chandlery, including stewards' supplies, deck, engine, and cabin supplies, for ships engaged in coastwise and foreign commerce, and respondents cause said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in various States of the United States bordering upon the eastern and southeastern coast thereof, and in transporting passengers and commodities from American ports to

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foreign countries in due course of commerce among the several States of the United States or with foreign countries; such supplies so sold by respondent being for consumption and use by the purchasers thereof, upon the high seas, in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondents in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondents in the course of their business as set out in paragraph 2 hereof, give and have given to captains and other officers of vessels to which they furnish ship chandlery, valuable gifts and cash commissions and gratuities, to induce such captains and officers to purchase their requirements of ship chandlery from respondents, and without other consideration therefor.

PAR. 4. That by reason of the facts recited the respondents are using an unfair method of competition in commerce; within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, George D. Flood and W. H. Calvert, partners, styling themselves Flood & Calvert, charging them with the use of unfair methods of competition in violation of the provisions of said act.

The respondents having entered their appearance and filed their answer herein, and having stipulated and agreed that a statement of facts signed and executed by counsel for the Commission and the respondents, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and thereupon this proceeding came on for final hearing, and the Commission having duly considered the record, and being now fully advised in the premises, makes this its findings as to facts and conclusion:

**FINDINGS AS TO THE FACTS.**

PARAGRAPH 1. That the respondents, George D. Flood and W. H. Calvert, are partners styling themselves Flood & Calvert, having their principal place of business located at the city of Galveston, State of Texas, and are now and at all times hereinafter mentioned have been engaged in selling ship chandlery, including stewards' supplies, deck, engine, and cabin supplies for ships engaged in coast-wise and foreign commerce, causing said commodities to be delivered

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to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in the various States of the United States and in transporting passengers and commodities from American ports to foreign countries, in due course of commerce among the several States of the United States or with foreign nations; such supplies so sold by respondents being for consumption and use by the purchasers thereof upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondents in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondents in the course of their business as described in paragraph 1 hereof for several years last past have given to captains and other officers and employees of vessels to which they furnished ship chandlery supplies, valuable gifts, cash commissions, and gratuities as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from respondents.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondents, George D. Flood and W. H. Calvert, partners, styling themselves Flood & Calvert, and their agents, servants, and employees, cease and desist from directly or indirectly giving to captains and other officers and employees of vessels, valuable gifts, cash commissions, and gratuities as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from respondents.

*It is further ordered,* That the respondents within 60 days after the date of service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in



Table.

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which they have complied with the order to cease and desist hereinbefore set forth.

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.	Commodity or business.	Answer, stipulation or trial.
1921. Jan. 27	630	Gulf Iron & Machine Co., Inc....	Galveston, Tex....	Ship repairs and ship repair parts.	Answer, stipulation, and trial.
27	631	T. J. Anderson, doing business under the trade name and style of Seaboard Transportation and Shipping Co.	.....do.....	.....do.....	Answer, stipulation, and consent.
27	632	Albert P. J. Voight, doing business under the trade name and style of Voight Machine Shop..	.....do.....	.....do.....	Do.
27	633	J. Bader, doing business under the trade name and style of Vulcan Iron Works.	.....do.....	.....do.....	Do.
27	634	Gray's Engineering Works, Inc..	.....do.....	.....do.....	Answer and stipulation.
27	635	John P. McDonough, doing business under the trade name and style of McDonough Iron Works.	.....do.....	.....do.....	Answer, stipulation, and consent.
27	637	A. B. McFadden and W. J. McFadden, partners, styling themselves The Texas Machine Works.	Port Arthur, Tex.	.....do.....	Do.
27	638	R. Kellogg, J. C. Currie, J. H. Giddens, copartners, styling themselves as Port Arthur Marine Engineering Works.	.....do.....	.....do.....	Do.
28	636	Marine Iron Works (Inc.).....	New Orleans, La.	.....do.....	Do.
28	639	Johnson Iron Works (Ltd.).....	.....do.....	.....do.....	Answer and stipulation.
28	641	Stern Foundry & Machinery Co. (Inc.)	.....do.....	.....do.....	Do.
28	642	Crescent City Machine and Manufacturing Works (Inc.)	.....do.....	.....do.....	Do.
28	643	Alex. Dussel Iron Works (Inc.)..	.....do.....	.....do.....	Answer, stipulation, and consent.
28	644	The Union Iron Works (Inc.)....	.....do.....	.....do.....	Do.
28	645	Wm. J. Tierney, doing business under the trade name and style of New Orleans Machine Works.	.....do.....	.....do.....	Do.
28	646	C. A. Simpson, doing business under the name and style of C. A. Simpson & Co.	Gulfport, Miss....	Ship supplies..	Do.
28	649	Home Industry Iron Works (Inc.)	Mobile, Ala.....	Ship repairs and ship repair parts.	Answer and stipulation.
28	650	Henderson Ship Building Co. (Inc.)	.....do.....	.....do.....	Do.
28	651	D. C. Hodges, doing business under the name and style of Hodges Boiler & Machine Works.	.....do.....	.....do.....	Answer, stipulation, and consent.
28	655	J. K. A. Hussey and L. T. Copp, partners, styling themselves Hussey & Copp.	Jacksonville, Fla..	Ship supplies..	Do.
28	658	Charleston Dry Dock & Machine Co.	Charleston, S. C...	Ship repairs and ship repair parts.	Answer and stipulation.
28	659	Charleston Iron Works.....	.....do.....	.....do.....	Answer, stipulation, and consent.
28	660	Savannah Ship Chandlery & Supply Co.	Savannah, Ga.....	Ship supplies..	Do.
29	661	C. G. Wilkinson, doing business under the name and style of Wilkinson Machine Co.	.....do.....	Ship repairs and ship repair parts.	Do.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

JOHN R. ADAMS, W. J. ADAMS, AND GEORGE T. ADAMS  
PARTNERS, STYLING THEMSELVES JOHN R. ADAMS  
& CO.

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

Docket 629—January 27, 1921.

## SYLLABUS.

Where a firm engaged in the sale of ship chandlery, including steward's supplies, deck, engine, and cabin supplies, gave to the captains and other employees of vessels to which they furnished supplies, cash commissions and gratuities as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that John R. Adams, W. J. Adams, and George T. Adams, partners, styling themselves John R. Adams & Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate and foreign 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, John R. Adams, W. J. Adams, and George T. Adams, partners, styling themselves John R. Adams & Co., have their principal place of business at Port Arthur, in the State of Texas.

PAR. 2. That the respondents are engaged in the business of selling ship chandlery, including steward's supplies, deck, engine, and cabin supplies, for ships engaged in coastwise and foreign commerce, and respondents caused said commodities to be delivered to ships reaching ports in the State of Texas while engaged in transporting passengers and commodities between ports in various States of the

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United States bordering upon the eastern and southeastern coast thereof, and in transporting passengers and commodities from American ports to foreign countries in due course of commerce among the several States of the United States and with foreign countries; such supplies so sold by respondent being for consumption and use by the purchasers thereof, upon the high seas, in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondents in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondents in the course of their business as set out in paragraph 2 hereof, give and have given to captains and other officers of vessels to which they furnish ship chandlery, valuable gifts and cash commissions and gratuities, to induce such captains and officers to purchase ship chandlery supplies from respondents, and without other consideration therefor.

PAR. 4. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, John R. Adams, W. J. Adams, and George T. Adams, partners, styling themselves John R. Adams & Co., charging them with the use of unfair methods of competition in violation of the provisions of said act.

The respondents having entered their appearance and having stipulated and agreed that a statement of facts signed and executed by counsel for the Commission and the respondents, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and thereupon this proceeding came on for final hearing, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts, and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, John R. Adams, W. U. Adams, and George T. Adams are partners styling themselves as John R. Adams & Co., having their principal place of business located at Port Arthur, State of Texas, and are now and at all times hereinafter

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mentioned have been engaged in selling ship chandlery, including steward's supplies, deck, engine and cabin supplies, for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in the various States of the United States and in transporting passengers and commodities from American ports to foreign countries, in due course of commerce among the several States of the United States or with foreign nations, such supplies so sold by respondents being for consumption and use by the purchasers thereof upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondents in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondents, in the course of their business as described in paragraph 1 hereof, for several years last past have given to captains and other officers and employees of vessels to which they furnish ship chandlery supplies, cash commissions and gratuities as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from respondents.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondents, John R. Adams, W. J. Adams, and George T. Adams, partners, styling themselves John R. Adams & Co. and their agents, servants, and employees, cease and desist from

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directly or indirectly giving to captains and other officers and employees of vessels, cash commissions and gratuities as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from respondents.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

GEO. C. LE GENDRE AND GEO. CHADWICK LE GENDRE,  
PARTNERS, STYLING THEMSELVES GEO. C. LE  
GENDRE & SON.

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

Docket 669—January 27, 1921.

## SYLLABUS.

Where a firm engaged in the sale of ship chandlery, including steward's supplies, deck, engine, cabin, and other supplies, gave to the captains and other officers of vessels to which it furnished supplies, without the knowledge and consent of their employers, valuable gifts, cash commissions, and gratuities as inducements to purchase, and as gratuities for purchasing, supplies:

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

## COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that George C. Le Gendre and George Chadwick Le Gendre, partners styling themselves George C. Le Gendre & Son, hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate and foreign 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, George C. Le Gendre and George Chadwick Le Gendre, partners styling themselves George C. Le Gendre & Son, have their principal place of business at Texas City, in the State of Texas.

PAR. 2. That the respondents are engaged in the business of selling ship chandlery, including steward's supplies, deck, engine, and cabin supplies, for ships engaged in coastwise and foreign commerce and respondents cause said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in coastwise and foreign

## Findings.

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commerce, such supplies being for consumption and use upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondents in the course of their business as set out in paragraph 2 hereof, give and have given to captains and other officers of vessels to which they furnish ship chandlery, valuable gifts and cash commissions and gratuities, to induce such captains and officers to purchase their requirements of ship chandlery, from respondents, without other consideration therefor.

PAR. 4. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Geo. C. LeGendre and Geo. Chadwick LeGendre, partners, styling themselves Geo. C. LeGendre & Son, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance and having filed their answer herein, admitting the allegations of the complaint and each count and paragraph thereof, and that according to law an order should be entered herein as prayed in said complaint, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to the facts and order without the introduction of testimony in support thereof, and having stipulated and agreed that a statement of facts signed and executed by counsel for the Commission and the respondents, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and thereupon this proceeding came on for final hearing, and the Commission having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Geo. C. LeGendre and Geo. Chadwick LeGendre, partners, styling themselves Geo. C. LeGendre & Son, have been engaged in the business of selling ship chandlery, including steward's, deck, engine, cabin, and other supplies to ships

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engaged in coastwise and foreign commerce, at Texas City, State of Texas, causing said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in the transportation of passengers and cargoes between ports in the various States of the United States and the transportation of passengers and cargoes between ports of the United States and foreign countries, such supplies so sold being for use and consumption upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That in the course of their business of selling supplies for ships as described in paragraph 1 hereof, the respondents for several months last prior to March 1, 1920, have given to captains and other officers of vessels to which they have furnished supplies, without the knowledge and consent of their employers, and without other consideration therefor, valuable gifts, cash commissions, and gratuities as inducements to purchase and as gratuities for purchasing for the owners of the vessels operated by said officers, their requirements of ship chandlery from the respondents.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondents, Geo. C. LeGendre and Geo. Chadwick LeGendre, partners, styling themselves Geo. C. LeGendre & Son, and their agents, servants, and employees cease and desist from directly or indirectly giving to captains and other officers of vessels



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valuable gifts, cash commissions, and gratuities as inducements to purchase and as gratuities for purchasing for the owners of the vessels operated by said officers their requirements of ship chandlery from the respondents.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

D. A. WINSLOW, J. JONES, AND D. H. ROBISHAW, A CO-PARTNERSHIP DOING BUSINESS UNDER THE NAME AND STYLE OF D. A. WINSLOW & CO.

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

Docket 458.—January 28, 1921.

## SYLLABUS.

Where a firm engaged in the sale of provisions, merchandise, and other ship supplies, gave to the captains of vessels to which it furnished supplies, without the knowledge and consent of their employers, large sums of money, as inducements to purchase, and as gratuities for purchasing, supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that D. A. Winslow, J. Jones, and D. H. Robishaw, a copartnership doing business under the name and style of D. A. Winslow & Co., have been and are using unfair methods of competition in interstate and foreign 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 in the interest of the public, issues this complaint stating its charges in that respect on opinion and belief as follows:

PARAGRAPH 1. That the respondents, D. A. Winslow, J. Jones, and D. H. Robishaw, a copartnership doing business under the name and style of D. A. Winslow & Co., with their principal office and place of business at the city of Norfolk, State of Virginia, are now, and have been for more than a year last past, engaged in selling provisions, merchandise, and other supplies for ships in interstate and foreign commerce, and that at all times hereinafter mentioned the respondents have carried on and conducted such business in direct competition

## Findings.

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

PAR. 2. That in the conduct of their business respondents purchase provisions, merchandise, and other supplies for ships in various States of the United States and Territories thereof and transport the same through other States and Territories in and to the city of Norfolk, State of Virginia, where the same are sold and delivered to ships owned by citizens of foreign countries with whom the respondents have negotiated and contracted to supply their ships with such supplies when calling at American ports, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between the various States and Territories of the United States and foreign countries.

PAR. 3. That in the course of their business of selling provisions, merchandise, and other supplies for ships in interstate and foreign commerce, the respondents are now and for more than one year last past have been giving and offering to give to employees of both their customers and prospective customers, and their competitors' customers and prospective customers, as an inducement to influence said employees to purchase or contract to purchase for their employers from the respondents, provisions, merchandise, and other supplies for ships, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 4. That in the course of their business of selling provisions, merchandise, and other supplies in interstate and foreign commerce, the respondents are now and for more than one year last past have been paying and offering to pay to employees of both their customers and prospective customers, and their competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence said employees to purchase or contract to purchase for their employers from the respondents, provisions, merchandise, and other supplies.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, D. A. Winslow, J. Jones, and D. H. Robishaw, a copartnership, doing business under the name and style of D. A. Winslow & Co., charging them with the use of unfair methods of competition in interstate and foreign commerce in violation of the provisions of said act.

The respondents having entered their appearance and filed their answers herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint, before an examiner of the Federal Trade Commission theretofore duly appointed.

And thereupon this proceeding came on for final hearing, and the attorneys for the Commission and respondents having waived the filing of briefs and oral argument and the Commission having fully considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, D. A. Winslow, J. Jones, and D. H. Robishaw, are copartners doing business under the name and style of D. A. Winslow & Co., with their principal places of business located at Norfolk and Newport News, State of Virginia, and are now and at all times hereinafter mentioned have been engaged in selling provisions, merchandise, and other supplies for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Virginia while engaged in transporting passengers and commodities between ports in various States of the United States and in transporting passengers and commodities between American ports and ports in foreign countries, in due course of commerce among the several States of the United States or with foreign nations; that such supplies so sold by respondents are for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondents in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That in the course of their business as described herein the respondents purchase provisions, merchandise, and other supplies for ships in the various States of the United States, transporting same from said places of purchase through other States, to their places of business in the State of Virginia, where they are kept and stored for their trade in furnishing supplies for ships as aforesaid.

PAR. 3. That in the course of their business of selling supplies for ships as described herein the respondents in some instances secure orders for the sale of supplies from captains of ships after arrival at ports in the State of Virginia, dealing directly with the captains without having arrangements in advance with the owners to furnish

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their ships with supplies when calling at these ports; that approximately 90 per cent of the respondent's business, amounting to as much as \$750,000 in some years, is initiated with the owners of ships in foreign countries through contracts entered into and agreed upon by a representative of the respondents soliciting business in those countries, in which the respondents agree to furnish ships with supplies when calling at Norfolk and other ports in the State of Virginia at prices named in the contracts, excepting when circumstances reasonably beyond the respondents' control compel them to vary such prices.

PAR. 4. That upon the arrival of a ship and after arrangements have been made, either by contract or otherwise, for the respondents to furnish a ship with supplies, the captain, after some preliminary negotiations, usually visits one of the stores of the respondents in Norfolk or Newport News and there selects and orders such supplies and in such quantities as he may determine his ship will require for its use in port and at sea; that after the supplies have been delivered and inspected and the ship is about to depart, the captain calls upon the respondents, checks over the bill for the supplies, and on his approval of same by signing it, the respondents secure payment for same from the agents of the owners at these ports authorized to pay the ship's disbursements or by draft on the owners.

PAR. 5. That in the course of their business of selling supplies for ships as described herein the respondents for several years last past have given to the captains of practically all of the vessels to which they have furnished supplies, without the knowledge and consent of their employers and without other consideration therefor, large sums of money, amounting in some instances to as much as \$400, or 5 per cent of their bills, as inducements to purchase and as gratuities for purchasing for the owners of the vessels operated by them, provisions, merchandise, and other supplies for ships from the respondents.

PAR. 6. In many instances where the respondents have contracts with shipowners to supply their vessels when calling at the ports at which respondents do business, such owners also have contracts or arrangements with ship chandlers in other ports of the United States to furnish their ships supplies when calling at those ports; that the captains of vessels whose owners have such contracts or arrangements with ship chandlers for supplies as herein described and found to exist, are required to purchase from ship chandlers with whom the owners have such contracts or arrangements; that vessels of such owners frequently call at several ports of the United States on the

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same trip, and that captains are clothed with discretion to make their purchases at such port as they may select; that the payment of commissions and the giving of gratuities by respondents, as found in paragraph 5, hereof, have been for the purpose of inducing captains to purchase supplies from them rather than from their competitors at Norfolk or other ports; that failure of respondents to pay commissions and give gratuities has resulted and will result in captains purchasing supplies at other ports where ship chandlers under contract or other arrangement with the owners will or may pay gratuities. In the case of what are termed "free" ships, the owners do not have subsisting contracts with ship chandlers to furnish supplies to the vessels when calling at ports of the United States, but the captains of such vessels have authority from the owners to purchase supplies at such ports from such ship chandlers and in such quantities as the captain may deem necessary and advisable; that the payment of commissions and the giving of gratuities by respondents in such cases have been to induce the captains to purchase supplies from the respondents.

#### CONCLUSION.

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

#### ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondents, D. A. Winslow, J. Jones, and D. H. Robishaw, a copartnership, doing business under the name and style of D. A. Winslow & Co., and their agents, servants, and employees, cease and desist from directly or indirectly giving to captains or other employees of vessels, sums of money or gratuities of any kind whatsoever as inducements to purchase or as gratuities

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for purchasing, for the owners of the vessels operated by them provisions, merchandise, and other supplies for ships, from the respondents.

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

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The Commission has also issued a similar order in the case of Norden Ship Supply Co. (Inc.) (of Baltimore, Md.), Docket 614, decided January 28, involving substantially the same facts as the preceding case.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

T. C. HURST AND FLOYD HURST, A COPARTNERSHIP  
DOING BUSINESS UNDER THE NAME AND STYLE OF  
T. C. HURST & SON.

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

Docket 613—January 28, 1921.

## SYLLABUS.

Where a firm engaged in the sale of groceries, provisions, meats, deck, engine, and other ship supplies, gave to captains and other employees of vessels to which it furnished supplies, without the knowledge and consent of their employers, sums of money and other gratuities as inducements to purchase, and as gratuities for purchasing, supplies;

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that T. C. Hurst and Floyd Hurst, a copartnership doing business under the name and style of T. C. Hurst & Son, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate and foreign 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, T. C. Hurst and Floyd Hurst, a copartnership doing business under the name and style of T. C. Hurst & Son, with their principal office and place of business at the city of Norfolk, State of Virginia, are now and for more than one year last past have been engaged in selling and delivering for transportation in interstate and foreign commerce, groceries, provisions, meats, deck, and engine supplies, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, T. C. Hurst and Floyd Hurst, a copartnership doing business under the name and style of T. C. Hurst & Son, in the conduct of their business, purchase such merchandise and



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supplies for ships in various States of the United States and Territories thereof and transport same through other States and Territories in and to the city of Norfolk, State of Virginia, where the same are sold and delivered to foreign-owned and American vessels engaged in plying and transporting goods between and among foreign and American ports, and engaged in plying and in transporting goods between and among American ports in interstate and foreign commerce. That said merchandise and ship supplies sold and delivered by respondent as aforesaid are for consumption and use by such ships or vessels upon the high seas in and beyond the territorial waters of the United States, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said merchandise and ship supplies as aforesaid between and among the various States and Territories of the United States and foreign countries.

PAR. 3. That the respondents, T. C. Hurst and Floyd Hurst, a copartnership doing business under the name and style of T. C. Hurst & Son, within one year last past, in the course of their business as aforesaid, have given to captains, engineers, and other employees of foreign and American owned ships and vessels to which they sold and delivered merchandise and ship supplies, as aforesaid, without the knowledge and consent of their employers or owners of said ships or vessels, sums of money and other gratuities as an inducement to influence their employers or owners of said ships or vessels to purchase said merchandise and ship supplies from the respondents.

PAR. 4. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, T. C. Hurst and Floyd Hurst, a copartnership doing business under the name and style of T. C. Hurst & Son, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance and having filed an answer admitting the allegations of the complaint as alleged, except that gratuities have only been given to a small percentage of

## Findings.

their trade for the purpose of retaining the good will of captains, engineers, and other employees of ships and of keeping the trade of the ships upon which they are employed, and that no gratuities have been given by them for the purposes alleged since January 1, 1920, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to the facts and its order disposing of this proceeding without the introduction of testimony, and that this answer shall be taken and considered as and in lieu of testimony, the taking of which the respondents waive.

And thereupon this proceeding came on for final hearing, and the attorneys for the Commission and the respondents having waived the filing of briefs and oral argument, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, T. C. Hurst and Floyd Hurst, are copartners doing business under the name and style of T. C. Hurst & Son, with their principal place of business at the city of Norfolk, State of Virginia, and are now and at all times hereinafter mentioned have been engaged in selling groceries, provisions, meats, deck, engine, and other supplies for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Virginia while engaged in transporting passengers and commodities between various States of the United States and in transporting passengers and commodities between American ports and ports in foreign countries, in due course of commerce among the several States of the United States or with foreign nations; that such supplies so sold by the respondents are for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondents in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That in the course of their business as described herein, the respondents purchase groceries, provisions, meats, deck, engine, and other supplies for ships in various States of the United States, transporting same from said places of purchase through other States to their place of business in the State of Virginia, where they are kept and stored for their trade in furnishing supplies for ships as aforesaid.

Order.

3 F. T. C.

PAR. 3. That in the course of their business of selling supplies for ships as described herein, the respondents for several years last prior to 1920 have given to captains, engineers, and other employees of vessels to which they have furnished supplies, without the knowledge and consent of their employers and without other consideration therefor, sums of money and other gratuities as inducements to influence their employers to purchase, and as gratuities for purchasing for said employers groceries, provisions, meats, deck, engine, and other supplies for ships from the respondents.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondents, T. C. Hurst and Floyd Hurst, copartners doing business under the name and style of T. C. Hurst & Son, their agents, representatives, servants, and employees, do cease and desist from directly or indirectly giving, or offering to give, to captains, engineers, and other employees of vessels sums of money and other gratuities as inducements to influence their employers to purchase and as gratuities for purchasing for said employers groceries, provisions, meats, deck, engine, and other supplies for ships from the respondents.

*It is further ordered,* That the respondents, T. C. Hurst and Floyd Hurst, copartners doing business under the name and style of T. C. Hurst & Son, file report in writing with the Commission not later than the 1st day of April, A. D. 1921, stating in detail the manner and form in which this order has been complied with and conformed to.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## MARINE EQUIPMENT COMPANY, INC.

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

Docket 615.—January 23, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of steel cables, rope, pulleys, hardware, and general merchandise required for deck and engine supplies on ships, gave to engineers and to other employees and representatives of customers and shipowners, small cash gratuities or commissions and presents of small value, meals, and occasional entertainment such as the theater and automobile rides, as inducements to purchase, and as gratuities for purchasing, supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Marine Equipment Co. (Inc.), hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate and foreign 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 Marine Equipment Co. (Inc.), is now and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business at the city of Norfolk, State of Virginia, and is now and for more than one year last past has been engaged in selling and delivering for transportation in interstate and foreign commerce, steel cables, rope, pulleys, hardware of all descriptions, and general merchandise required for deck and engine supplies on ships, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

## Findings.

3 F. T. C.

PAR. 2. That the respondent in the conduct of its business purchases such merchandise and supplies for ships in various States of the United States and Territories thereof and transports same through other States and Territories in and to the city of Norfolk, State of Virginia, where the same are sold and delivered to foreign-owned and American vessels engaged in plying and transporting goods between and among foreign and American ports, and engaged in plying and in transporting goods between and among American ports in interstate and foreign commerce. That said merchandise and ship supplies sold and delivered by respondent as aforesaid are for consumption and use by such ships or vessels upon the high seas in and beyond the territorial waters of the United States and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said merchandise and ship supplies as aforesaid between and among the various States and Territories of the United States and foreign countries.

PAR. 3. That the respondent, the Marine Equipment Co. (Inc.), within the two years last past in the course of its business as aforesaid, has given to captains, engineers, and other employees of vessels to which it sold and delivered merchandise and ship supplies, without the knowledge and consent of their employers or owners, of said ships or vessels, sums of money and other gratuities as an inducement to influence their employers or owners of said ships or vessels, to purchase said merchandise and supplies from the respondent.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, the Marine Equipment Co. (Inc.), charging it with the use of unfair methods of competition in interstate and foreign commerce, in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, and having stipulated and agreed that a statement of facts signed and executed by Adrien F. Busick, acting chief counsel for the Federal Trade Commission, and the respondent, subject to

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## Findings.

the approval of the Commission, shall be taken by the Commission in lieu of testimony, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to the facts, its conclusions, and order disposing of this proceeding without the introduction of testimony in support thereof; and thereupon this proceeding came on for final hearing and the attorneys having waived the filing of briefs and oral argument and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Marine Equipment Co. (Inc.), is a corporation organized and existing under the laws of the State of Virginia, having its principal office and place of business at the city of Norfolk, State of Virginia, and is now and for more than one year last past has been engaged in selling steel cables, rope, pulleys, hardware, and general merchandise required for deck and engine supplies on ships; that in the conduct of its business the respondent purchases such merchandise and supplies in various States of the United States and transports same through other States to the city of Norfolk, State of Virginia, where the same are sold and delivered to foreign-owned and American vessels engaged in plying and transporting goods between and among foreign and American ports, and engaged in plying and transporting goods between American ports, such supplies so sold by respondent being for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, the Marine Equipment Co. (Inc.), in the course of its business as described in paragraph 1 hereof, for several years last past has given cash gratuities or commissions of \$5 each to engineers of certain boats of customers upon the purchase of a barrel of oil, and presents of hats and other things of small value to representatives and employees of customers to whom it was selling supplies, and it has frequently taken the agents and representatives of customers and shipowners to whom it was selling supplies to lunch or dinner, and occasionally to the theater and on automobile rides in and about the city of Norfolk, as an inducement to influence their employers to purchase, and as gratuities for purchasing for said employers, steel cables, rope, pulleys, hardware, general merchandise, and other supplies for ships from the respondent.

Order.

S F. T. C.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, the Marine Equipment Co. (Inc.), and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly giving to captains, engineers and other employees of vessels cash gratuities, commissions, valuable presents and entertainment as inducements to influence their employers to purchase, and as gratuities for purchasing for said employers, steel cables, rope, pulleys, hardware, general merchandise, and other supplies for ships from respondent.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## EVERETT SUPPLY COMPANY, INC.

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

Docket 640.—January 28, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of ship chandlery, including steward's supplies, and deck, engine, and cabin supplies, gave to captains and other officers and employees of vessels to which it furnished supplies valuable presents, cigars, meals, theater tickets, automobile drives, and other forms of entertainment, amusements, or diversion as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Everett Supply Co. (Inc.), hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

PAR. 2. That the respondent is engaged in the business of selling ship chandlery, including deck and engine supplies, for ships engaged in coastwise and foreign commerce, and delivers said commodities to ships reaching ports in the said State of Louisiana, while engaged in transporting passengers and commodities between ports in various States of the United States, and in transporting passengers and commodities between ports of the United States and foreign countries, and in due course of commerce between the several States of the United States, and with foreign nations, such supplies so sold by respondent being for consumption and use by the pur-



## Findings.

3 F. T. C.

chasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business as set out in paragraph 2 hereof, gives and has given to captains and other officers and employees of vessels to which it furnishes ship chandlery expensive gifts, liquors, cigars, meals, theater tickets, automobile drives, and other forms of entertainment, amusement, or diversion, to induce such officers and employees to purchase their requirements of ship chandlery from respondent and without other consideration therefor; that respondent expends for gifts to and entertainment for officers and employees of vessels to which it furnishes ship chandlery supplies, large sums of money, equaling approximately 5 per cent of its total volume of business done, thereby paying out for such entertainment purposes approximately \$850 per month.

PAR. 4. That by reason of the facts recited the respondent is using an unfair method of competition in interstate commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Everett Supply Co. (Inc.), charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein, admitting the allegations of the complaint and each count and paragraph thereof, and that according to law an order should be entered herein as prayed in said complaint, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to facts and order without the introduction of testimony in support thereof, and having stipulated and agreed that a statement of facts signed and executed by counsel for the Commission and the respondent, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and thereupon this proceeding came on for final hearing, and the Commission now being fully advised in the premises, makes this its findings as to the facts and conclusion:

## Order.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Everett Supply Co. (Inc.), is a corporation organized and existing under the laws of the State of Louisiana, New Orleans in said State, and is now and at all times hereinafter mentioned has been engaged in selling ship chandlery, including steward's supplies, deck, engine and cabin supplies for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Louisiana, while engaged in transporting passengers and commodities between ports in the various States of the United States and in transporting passengers and commodities from American ports to foreign countries, in due course of commerce among the several States of the United States or with foreign nations; such supplies so sold by respondent being for consumption and use by the purchasers thereof upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondent in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the course of its business as described in paragraph 1 hereof for several years last past has given to captains and other officers and employees of vessels to which it furnished ship chandlery supplies, valuable presents, cigars, meals, theater tickets, automobile drives, and other forms of entertainment, amusement, or diversion as an inducement to such officers and employees to purchase for the owners of the vessels operated by them, ship chandlery supplies from respondent.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and an agreed statement of facts, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the act of Congress ap-

## Order.

3 F. T. C.

proved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is ordered,* That the respondent, Everett Supply Co. (Inc.), and its officers, directors, agents, servants, and employees cease and desist from directly or indirectly giving to captains and other officers and employees of vessels valuable presents, cigars, meals, theater tickets, automobile drives, and other forms of entertainment, amusements, or diversion, as an inducement to such officers and employees to purchase for the owners of the vessels operated by them, ship chandlery supplies from respondent.

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

## Complaint.

FEDERAL TRADE COMMISSION  
v.  
COWLES SHIP SUPPLY COMPANY, INC.

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

Docket 647.—January 28, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of ship chandlery, including steward's supplies, deck, engine, and cabin supplies, gave to captains and other employees of vessels to which it furnished supplies, valuable gifts, cash commissions, gratuities, and entertainment as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Cowles Ship Supply 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 an act of 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 a corporation organized under the laws of the State of Alabama, with principal place of business at Mobile, in said State.

PAR. 2. That respondent is engaged in the business of selling ship chandlery supplies for ships engaged in transporting passengers and cargoes between ports in various States of the United States and transporting passengers and cargoes between ports of the United States and foreign nations, and delivers such supplies when sold, to ships reaching the port of Mobile, while engaged in coastwise and foreign commerce as herein described, such supplies being for consumption and use upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted

## Findings.

3 F. T. C.

by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in paragraph 2 hereof, gives and has given to captains and other officers and employees of vessels to which it furnishes ship chandlery supplies, valuable gifts and cash commissions and gratuities and provides for such officers and employees expensive entertainment to induce such officers and employees to purchase ship chandlery supplies from respondent, and without other consideration therefor.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

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

The respondent having entered its appearance and filed its answer herein, admitting the allegations of the complaint and each count and paragraph thereof, and that according to law an order should be entered herein as prayed in said complaint, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to facts and order without the introduction of testimony in support thereof, and having stipulated and agreed that a statement of facts signed and executed by counsel for the Commission and the respondent, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and thereupon this proceeding came on for final hearing, and the Commission having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Cowles Ship Supply Co. (Inc.), is a corporation organized and existing under the laws of the State of Alabama, having its principal place of business located at the city of Mobile, in said State, and is now and at all times here-

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## Order.

inafter mentioned has been engaged in selling ship chandlery, including steward's supplies, deck, engine, and cabin supplies for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Alabama, while engaged in transporting passengers and commodities between ports in the various States of the United States and in transporting passengers and commodities from American ports to foreign countries, in due course of commerce among the several States of the United States or with foreign nations; such supplies so sold by respondent being for consumption and use by the purchasers thereof upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondent in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the course of its business as described in paragraph 1 hereof for several years last past has given to captains and other officers and employees of vessels to which it furnished ship chandlery supplies, valuable gifts, cash commissions, gratuities, and entertainment as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from respondent.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

## Order.

3 F. T. C.

*It is ordered,* That the respondent, Cowles Ship Supply Co. (Inc.), and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly giving to captains and other officers and employees of vessels valuable gifts, cash commissions, gratuities, and entertainment as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from respondent.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

W. A. RHEA.

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

Docket 656.—January 28, 1921.

## SYLLABUS.

Where an individual, engaged in the sale of ship chandlery, gave to captains of vessels to which he furnished supplies, sums of money, amounting to 5 and 10 per cent of their bills, as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that W. A. Rhea, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That respondent is engaged in the business of selling ship chandlery supplies for ships engaged in transporting cargoes between ports in various States of the United States, and between ports of the United States and foreign countries, and delivers such supplies when sold, to ships which reach the port of Charleston, S. C., while engaged in coastwise and foreign commerce, such supplies being for consumption and use upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That respondent in the course of its business as described in paragraph 1 hereof, gives and has given to captains and other officers and employees of vessels to which he sells ship chandlery supplies, cash commissions and gratuities and provides for such officers and employees entertainment to induce them to purchase from



## Findings.

3 F. T. C.

respondent ship chandlery supplies, and without other consideration th. refer.

PAR. 3. That by reason of the facts recited the respondent has been using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, W. A. Rhea, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein, and having stipulated and agreed that a statement of facts, signed and executed by counsel for the Commission and the respondent, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and that the Commission shall forthwith proceed upon said agreed statement of facts to make and enter its report, findings as to the facts, and order disposing of this proceeding without the introduction of testimony, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

**FINDINGS AS TO THE FACTS.**

PARAGRAPH 1. That the respondent, W. A. Rhea, is now and at all times hereinafter mentioned has been engaged in selling ship chandlery supplies for ships engaged in transporting cargoes between ports in various States of the United States and between ports of the United States and foreign countries, and delivers such supplies when sold, to ships which reach the port of Charleston, State of South Carolina, while engaged in coastwise and foreign commerce, such supplies so sold by respondent being for consumption and use by the purchasers thereof upon the high seas, in and beyond the territorial jurisdiction of the United States, said business being conducted by respondent in direct competition with other persons, partnerships, and corporations similarly engaged.

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## Order.

PAR. 2. That the respondent in the course of his business, as described in paragraph 1 hereof, for several years last prior to January 1, 1920, has given to captains of foreign ships to which he furnished ship chandlery supplies, sums of money, amounting to 5 and 10 per cent of their bills for supplies furnished said ships, as an inducement to purchase for the owners of vessels operated by them ship chandlery supplies from the respondent.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondent, W. A. Rhea, his agents, servants, and employees, cease and desist from directly or indirectly giving to captains and other officers and employees of vessels, sums of money as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from respondent.

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

Complaint.

S F. T. C.

## FEDERAL TRADE COMMISSION

v.

EUGENE RICHARDSON, W. R. RICHARDSON, AND J. W. RICHARDSON, PARTNERS, STYLING THEMSELVES RICHARDSON BROS.

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

Docket 657.—January 23, 1921.

## SYLLABUS.

Where a firm engaged in the sale of ship chandlery, including steward's supplies, deck, engine, and cabin supplies, gave to captains and other employees of vessels to which it furnished supplies, valuable gifts, sums of money, and entertainment, including automobile rides, pleasure trips, and meals as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that Eugene Richardson, W. R. Richardson, and J. W. Richardson, partners, styling themselves Richardson Bros., hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate and foreign 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:

PARAGRAPHS 1. That the respondents, Eugene Richardson, W. R. Richardson, and J. W. Richardson, partners styling themselves Richardson Bros., have their principal place of business in Charleston, in the State of South Carolina.

PAR. 2. That the respondents are engaged in the business of selling ship chandlery, including steward's supplies, deck, engine, and cabin supplies, for ships engaged in coastwise and foreign commerce, and respondents deliver said commodities to ships reaching the ports in the State of South Carolina, while engaged in transporting passengers and cargoes between ports in the various States of the United States and between ports of the United States and foreign nations, such supplies being for consumption and use upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondents in the course of their business, as set out in paragraph 2 hereof, give and have given to captains and other officers of vessels to which they furnish ship chandlery, valuable gifts and cash commissions and gratuities, and provide for such officers and employees while in the port of Charleston, lavish entertainment, including automobile rides, theater tickets, pleasure trips, and meals, to induce such captains and officers to purchase their requirements of ship chandlery from respondents, and without other consideration therefor.

PAR. 4. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Eugene Richardson, W. R. Richardson, and J. W. Richardson, partners, styling themselves Richardson Bros., charging them with the use of unfair methods of competition in violation of the provisions of said act.

The respondents have entered their appearance and filed their answer herein, and having stipulated and agreed that a statement of facts, signed and executed by counsel for the Commission and the respondents, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and having agreed and consented that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to the facts, its conclusion and order without the introduction of testimony in support thereof, thereupon this proceeding came on for final hearing, and the Com-

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

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Eugene Richardson, W. R. Richardson, and J. W. Richardson, are partners, styling themselves Richardson Bros., having their principal place of business located at the city of Charleston, State of South Carolina, and are now and at all times hereinafter mentioned have been engaged in selling ship chandlery, including steward's supplies, deck, engine, and cabin supplies for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of South Carolina, while engaged in transporting passengers and commodities between ports in the various States of the United States, and in transporting passengers and commodities from American ports to foreign countries, in due course of commerce among the several States of the United States or with foreign nations, such supplies, so sold by respondents, being for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondents in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondents in the course of their business, as described in paragraph 1 hereof, for several years last past have given to captains and other officers and employees of vessels to which they furnished ship chandlery supplies, valuable gifts, sums of money, and entertainment, including automobile rides, pleasure trips, and meals, as an inducement to such officers and employees to purchase, for the owners of the vessels operated by them, ship chandlery supplies from respondents.

CONCLUSION.

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

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and an agreed statement of facts, and the Commission

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## Order.

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

*It is ordered,* That the respondents, Eugene Richardson, W. R. Richardson, and J. W. Richardson, partners, styling themselves Richardson Bros., and their agents, servants, and employees, cease and desist from directly or indirectly giving to captains and other officers and employees of vessels, valuable gifts, sums of money, and entertainment, including automobile rides, pleasure trips, and meals, as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from the respondents.

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

Complaint.

3 F. T. C.

## FEDERAL TRADE COMMISSION

v.

## LASKER &amp; BERNSTEIN.

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

Docket 374.—February 4, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of sponges by weight,

- (a) "Loaded" sponges by the addition of foreign substances which did not increase their usefulness or durability, but were added for the sole purpose of increasing their weight;
- (b) With the knowledge and expectation that the same would be resold to retailers and large consumers without disclosing the fact that their weight had been artificially increased, sold such "loaded" sponges to packers and wholesalers without disclosing the amount of such "loading," thereby enabling such packers and wholesalers to mislead and deceive retailers and consumers who unwittingly bore, in whole or in part, the cost of such "loading";

With the effect of aiding in the misleading and deception of retailers and consumers, of enabling it and its packer and wholesale purchasers to secure business on a false and fictitious basis, and of forcing competitors also to sell "loaded" sponges; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Lasker & Bernstein, 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondent, Lasker & Bernstein, is a corporation, organized and existing under the laws of the State of New York, having its principal office and place of business in the city of New York, in said State. That for more than a year last past

respondent has been engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other 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 in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of New York, State of New York, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States and more particularly from the State of Florida and foreign countries to and through the city of New York, State of New York, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure, unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as and for pure unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.



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PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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

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

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

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Lasker & Bernstein, is a corporation organized and existing under and by virtue of the laws of the

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## Findings.

State of New York, having its principal office and place of business located at the city of New York in said State, and is now and at all times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of New York, in the State of New York, to purchasers thereof located throughout the different States of the United States and the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases sponges in the different States of the United States and in foreign countries and causes the same to be transported through other States to its place of business located in the city of New York, in the State of New York, from which place said sponges are sold and shipped to purchasers thereof in the different States of the United States and the District of Columbia, and there is and has been at all times hereinafter mentioned a current of trade and commerce in said sponges among and between the various States of the United States and the District of Columbia.

PAR. 3. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein had been engaged in artificially increasing the weight of sponges by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution are incorporated into the texture of said sponges and remain in said sponges after the said sponges are dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances as aforesaid is commonly known to and designated by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight is artificially increased is referred to as "loading."

PAR. 4. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to the sponges in the process of "loading" do not in any way add to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or sub-

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stances introduced in the process of "loading" are generally washed out and lost.

PAR. 5. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein, had been selling and shipping by weight in interstate commerce sponges "loaded" by it as aforesaid to purchasers thereof, including among others, sponge packers and wholesale dealers; that respondent in selling said "loaded" sponges to said sponge packers and said wholesale dealers did not disclose or make known to said sponge packers or said wholesale dealers the amount of matter artificially added to said sponges; that said sponge packers and said wholesale dealers did not know the amount of matter artificially added to said sponges; that the "loading" of said sponges was paid for by said sponge packers and said wholesale dealers.

PAR. 6. That said sponge packers who purchased from respondent "loaded" sponges as aforesaid resold said sponges by weight to purchasers thereof, including among others, wholesale druggists and other wholesale dealers handling sponges; that said sponge packers in reselling said "loaded" sponges to said wholesale dealers did not disclose or make known to said wholesale dealers the amount of matter artificially added to said sponges; that said wholesale dealers did not know the amount of matter artificially added to said sponges; that the "loading" of said sponges was paid for by said wholesale dealers.

PAR. 7. That said wholesale dealers who purchased said "loaded" sponges from respondent and from said other sponge packers in turn resold said "loaded" sponges by weight to purchasers thereof, including, among others, retail dealers, such as dealers in the drug, hardware, and paint and oil lines, and large consumers, such as garages, painters, decorators, office buildings, and manufacturing concerns; that said wholesale dealers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did not know that said sponges were "loaded" and did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased; that the respondent "loaded" said sponges and sold said "loaded" sponges to said sponge packers and to said wholesale dealers with the knowledge and expectation that said "loaded" sponges would be resold to said retail dealers and said consumers in a manner calculated to deceive and mislead and actually deceiving and misleading said retail dealers and said consumers; that the cost of the substance or substances added to said sponges by the process of "loading," and of the labor by which said

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substance or substances were introduced into said sponges, was ultimately borne, in whole or in part, by said retail dealers and said consumers without their knowledge.

PAR. 8. That the "loading" of sponges and the sale of "loaded" sponges by the respondent, as aforesaid, is a fraudulent and deceptive practice and results in injury to the public; that it enables said wholesale dealers who purchase said "loaded" sponges to resell said sponges as and for sponges whose weight has not been artificially increased and in the natural course of business causes such result; that the practice of "loading" as aforesaid is calculated to and does enable said respondent and said sponge packers and said wholesale dealers who resell said "loaded" sponges to secure business on a false and fictitious basis to the injury of the competitors of respondent and the competitors of said sponge packers and the competitors of said wholesale dealers who do not sell "loaded" sponges, and to the injury of the public.

PAR. 9. That the sale of "loaded" sponges by respondent, as aforesaid, has the tendency and capacity to, and does, force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, Lasker & Bernstein, and its agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

Table.

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1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce, by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce, any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

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

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

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.	Answer, stipulation or trial.
1921				
Feb. 4	377	American Sponge & Chamois Co. ....	New York City...	} Trial. Do. Do.
4	380	Greek American Sponge Co. ....	Chicago, Ill. ....	
4	383	National Sponge & Chamois Co. .... (Nassau Sponge Co. ....)	New York City... Chicago, Ill. ....	

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## JOSEPH BLOCH, INC.

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

Docket 375—February 4, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of sponges by weight to retailers and large consumers, "loaded" sponges by the addition of foreign substances which did not increase the usefulness or durability of the sponges, but were added for the sole purpose of increasing their weight, and sold such "loaded" sponges without disclosing the fact that their weight had been artificially increased, thereby defrauding, deceiving, and misleading retailers and consumers, enabling it to secure business on a false and fictitious basis, and forcing competitors also to sell "loaded" sponges; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Joseph Bloch (Inc.), 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondent, Joseph Bloch (Inc.), is a corporation organized and existing under the laws of the State of New York, having its principal office and place of business in the city of New York, in said State. That for more than one year last past respondent has been engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

## Complaint.

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PAR. 2. That in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of New York, State of New York, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States, and more particularly from the State of Florida and foreign countries to and through the city of New York, State of New York, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring, others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges, as, and for, pure unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.

PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing

## Findings.

of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges, as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Joseph Bloch (Inc.), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

## FINDINGS AS TO THE FACTS.

PARARAPH 1. That respondent, Joseph Bloch (Inc.), is 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 located at the city of New York, in said State, and is now and at all



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times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of New York, in the State of New York, to purchasers thereof located throughout the different States of the United States and the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases sponges in different States of the United States and in foreign countries and causes the same to be transported through other States to its place of business located in the city of New York, in the State of New York, from which place said sponges are sold and shipped to purchasers thereof in the different States of the United States and the District of Columbia, and there is and has been at all times hereinafter mentioned a current of trade and commerce in said sponges among and between the various States of the United States and the District of Columbia.

PAR. 3. That in the conduct of its business respondent, for more than two years prior to the filing of the complaint herein, had been engaged in artificially increasing the weight of sponges by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution are incorporated into the texture of said sponges and remain in said sponges after the said sponges are dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances as aforesaid is commonly known to and designated by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight is artificially increased is referred to as "loading."

PAR. 4. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to sponges in the process of "loading" do not add in any way to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or substances introduced in the process of "loading" are generally washed out and lost.

## Order.

PAR. 5. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein had been selling and shipping by weight in interstate commerce sponges "loaded" by it as aforesaid to purchasers thereof, including among others retail dealers handling sponges and large consumers, such as garages, painters, decorators, office buildings, and manufacturing concerns; that respondent in selling said "loaded" sponges to said retail dealers and said consumers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased.

PAR. 6. That the "loading" of sponges and the sale of "loaded" sponges by respondent, as aforesaid, is a fraudulent and deceptive practice, and is designed and calculated to and does defraud, deceive, and mislead retail dealers and consumers; that the practice of "loading" as aforesaid is designed and calculated to and does enable respondent to sell said "loaded" sponges on a false and fictitious basis, and to secure business on a false and fictitious basis, to the injury of competitors of said respondent who do not sell "loaded" sponges and to the injury of the public.

PAR. 7. That the sale of "loaded" sponges by respondent, as aforesaid, has the tendency and capacity to and does force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

Table.

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*It is now ordered,* That the respondent, Joseph Bloch (Inc.), and its agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce, by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce, any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

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

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

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.	Answer, stipulation or trial.
1921 Feb. 4	386	Albert Bloch, Dave Bloch, and Benjamin G. Bloch, copartners, doing business under the firm name and style of Albert Bloch & Son.	New York City...	Trial.
4	393	Nathan Sinenberg, a sole trader, doing business under the name and style of Florida Sponge & Chamola Co.	.....do.....	Do.
4	394	Harry J. Levy, J. D. Levy, and Nathan Levy, copartners, doing business under the firm name and style of Levy Bros.	Boston, Mass.....	Do.

## Complaint.

FEDERAL TRADE COMMISSION  
*v.*  
H. L. ETTMAN SPONGE COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 379.—February 4, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of sponges by weight to retailers and large consumers, without disclosing the fact that their weight had been artificially increased, sold sponges "loaded" by the addition of foreign substances which did not increase their usefulness or durability, but were added for the sole purpose of increasing their weight, thereby defrauding, deceiving, and misleading retailers and consumers, enabling it to secure business on a false and fictitious basis, and forcing competitors also to sell "loaded" sponges; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that H. L. Ettman Sponge 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondent, H. L. Ettman Sponge Co., is a corporation, organized, and existing under the laws of the State of Missouri, having its principal office and place of business in the city of St. Louis, in said State. That for more than a year last past respondent has been engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

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PAR. 2. That in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of St. Louis, State of Missouri, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States and more particularly from the State of Florida and foreign countries to and through the city of St. Louis, State of Missouri, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure, unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure, unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure, unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.

PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign

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matter, such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure, unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as and for pure, unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure, unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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

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

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

And thereupon this proceeding came on for final hearing, and the attorney for the Commission having submitted briefs, and the Commission having heard oral argument, and the Commission, having fully considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, H. L. Ettman Sponge Co., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, having its principal office and place of business located at the city of St. Louis, in said State, and is now and at all times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of St. Louis, in the State of Missouri, to purchasers thereof located throughout the

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

PAR. 2. That in the conduct of its business respondent purchases sponges in different States of the United States and causes the same to be transported through other States to its place of business, located in the city of St. Louis, in the State of Missouri, from which place said sponges are sold and shipped to purchasers thereof in different States of the United States and the District of Columbia, and there is and has been at all times hereinafter mentioned a current of trade and commerce in said sponges among and between the various States of the United States and the District of Columbia.

PAR. 3. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein had been engaged in purchasing from sponge packers located at the city of New York, in the State of New York, and the city of Tarpon Springs, in the State of Florida, sponges whose weight had been artificially increased by said sponge packers by a process of soaking said sponges in a solution of a substance or substances, such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution were incorporated into the texture of said sponges and remained in said sponges after the said sponges were dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances as aforesaid is commonly known to and designated by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges; and the process by which the weight has been artificially increased is referred to as "loading."

PAR. 4. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to sponges in the process of "loading" do not add in any way to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or substances introduced in the process of "loading" are generally washed out and lost.

**Order.**

PAR. 5. That in the conduct of its business respondent for more than two years prior to the filing of the complaint herein had been selling and shipping by weight in interstate commerce sponges "loaded" by it as aforesaid to purchasers thereof, including among others retail dealers handling sponges and large consumers, such as garages, painters, decorators, office buildings, and manufacturing concerns; that respondent in selling said "loaded" sponges to said retail dealers and said consumers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased.

PAR. 6. That the sale of "loaded" sponges by respondent as aforesaid is a fraudulent and deceptive practice and is designed and calculated to and does defraud, deceive, and mislead retail dealers and consumers; that the practice of "loading" as aforesaid is designed and calculated to and does enable respondent to sell said "loaded" sponges on a false and fictitious basis and to secure business on a false and fictitious basis, to the injury of competitors of said respondent who do not sell "loaded" sponges and to the injury of the public.

PAR. 7. That the sale of "loaded" sponges by respondent as aforesaid has the tendency and capacity to and does force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

**CONCLUSION.**

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

**ORDER TO CEASE AND DESIST.**

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to



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create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That the respondent, H. L. Ettman Sponge Co., and its agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce, any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

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

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

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.	Answer, stipulation, or trial.
1921. Feb. 4	384	M. F. Rosenbaum and H. P. Stock, copartners, doing business under the firm name and style of Atlantic Sponges Co.	New York City....	Trial.
4	389	Theodora Schroeder and Harry H. Tremayne, copartners, doing business under the firm name and style of Schroeder & Tremayne.	St. Louis, Mo.....	Do.
4	390	S. Perlman and Charles Perlman, doing business under the firm name and style of S. Perlman & Son.	New York City...	Do.
4	391	Franklin L. Lampel, sole trader, doing business under the name and style of F. L. Lampel Sponge Co.	St. Louis, Mo.....	Do.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## PETER VAN SCHAACK &amp; SONS.

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

Docket 381—February 4, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of sponges by weight—

- (a) "Loaded" sponges by the addition of foreign substances, which did not increase their usefulness or durability, but were added for the sole purpose of increasing their weight; and
- (b) With the knowledge and expectation that the same would be resold without disclosing the fact that their weight had been artificially increased, sold such "loaded" sponges to wholesalers without disclosing the amount of such "loading," thereby enabling the purchasers to mislead and deceive retailers and consumers who unwittingly bore, in whole or in part, the cost of such "loading";

With the effect of aiding in the misleading and deception of retailers and consumers, of enabling it and its wholesale purchasers to secure business on a false and fictitious basis, and of forcing competitors also to sell "loaded" sponges; all to the injury of competitors who did not sell "loaded" sponges, and to the injury of the public;

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Peter Van Schaack & Sons, 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 that respect on information and belief as follows:

PARAGRAPH 1. That respondent, Peter Van Schaack & Sons, is a corporation organized and existing under the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State. That for more than one year last past respondent has been engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment

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of said sponges to persons, firms, copartnerships, and corporations in other 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 in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of Chicago, State of Illinois, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States and more particularly from the State of Florida and foreign countries to and through the city of Chicago, State of Illinois, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring, others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure, unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure, unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure, unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.

PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Peter Van Schaack & Sons, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Peter Van Schaack & Sons, is a corporation organized and existing under and by virtue of the laws

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of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State, and is now and at all times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of Chicago, in the State of Illinois, to purchasers thereof located throughout the different States of the United States and the District of Columbia in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases sponges in different States of the United States and in foreign countries and causes the same to be transported through other States to its place of business located in the city of Chicago, in the State of Illinois, from which place said sponges are sold and shipped to purchasers thereof in different States of the United States and the District of Columbia, and there is and has been at all times hereinafter mentioned a current of trade and commerce in said sponges among and between the various States of the United States and the District of Columbia.

PAR. 3. That in the conduct of its business respondent, for more than two years prior to the filing of the complaint herein, had been engaged in artificially increasing the weight of sponges by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution are incorporated into the texture of said sponges and remain in said sponges after the said sponges are dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances, as aforesaid, is commonly known to and designated by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight is artificially increased is referred to as "loading."

PAR. 4. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor is approximately 20 cents; that the substance or substances added to sponges in the process of "loading" do not add in any way to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or substances

introduced in the process of "loading" are generally washed out and lost.

PAR. 5. That in the conduct of its business respondent, for more than two years prior to the filing of the complaint herein, had been selling and shipping by weight in interstate commerce sponges "loaded" by it as aforesaid, to purchasers thereof, including, among others, wholesale dealers handling sponges; that respondent in selling said "loaded" sponges to said wholesale dealers did not disclose or make known to said wholesale dealers the amount of matter artificially added to said sponges; that said wholesale dealers did not know the amount of matter artificially added to said sponges; that the "loading" of said sponges was paid for by said wholesale dealers.

PAR. 6. That said wholesale dealers who purchased said "loaded" sponges from respondent in turn resold said "loaded" sponges by weight to purchasers thereof, including among other retail dealers, such as dealers in the drug, hardware, and paint and oil lines, and large consumers of sponges, such as garages, painters, decorators, office buildings, and manufacturing concerns; that said wholesale dealers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased by "loading," as aforesaid; that respondent "loaded" said sponges and sold said "loaded" sponges to said wholesale dealers with the knowledge and expectation that said "loaded" sponges would be resold by said wholesale dealers to said retail dealers and said consumers in a manner calculated to deceive and mislead and actually deceiving and misleading said retail dealers and said consumers; that the cost of the substance or substances added to said sponges by the process of "loading," and of the labor by which said substance or substances were introduced into said sponges, was ultimately borne, in whole or in part, by said retail dealers and said consumers, without their knowledge.

PAR. 7. That the "loading" of sponges and the sale of "loaded" sponges by respondent, as aforesaid, is a fraudulent and deceptive practice and results in injury to the public; that it enables said wholesale dealers who purchase said "loaded" sponges to resell said sponges as and for sponges whose weight has not been artificially increased and in the natural course of business causes such result; that the practice of "loading" as aforesaid is calculated to and does enable respondent and said wholesale dealers who resell said "loaded" sponges to secure business on a false and fictitious basis to the injury of competitors of said respondent and to the injury of competitors

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of said wholesale dealers who do not sell "loaded" sponges and to the injury of the public.

PAR. 8. That the sale of "loaded" sponges by respondent, as aforesaid, has the tendency and capacity to, and does, force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered*, That the respondent, Peter Van Schaack & Sons, and its agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

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

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Table.

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

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.	Answer, stipulation, or trial.
1921.				
Feb. 4	382	Jos. Niehaus Co.....	Cincinnati, Ohio..	Trial.
4	385	Herbert N. Worth and Maurice Seelman, copartners, doing business under the firm name and style of A. Isaacs Co.	New York City...	Do.
4	387	Henry Freirich and Paul Mansell, copartners, doing business under the firm name and style of Freirich & Mansell.	.....do.....	Do.
4	396	John K. Cheyney, John Boucholes, and Siallos Boucholes, copartners, doing business under the firm name and style of John K. Cheyney & Co.	Tarpon Springs, Fla.	Do.
4	397	George M. Emmanuel, a sole trader, doing business under the name and style of George M. Emmanuel & Co.	.....do.....	Do.



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## FEDERAL TRADE COMMISSION

v.

EMIL BLOCH, A SOLE TRADER, DOING BUSINESS UNDER  
THE NAME AND STYLE OF EMIL BLOCH.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5  
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 392—February 4, 1921.

## SYLLABUS.

Where an individual engaged in the sale of sponges by weight to retailers and large consumers, "loaded" sponges by the addition of foreign substances which did not increase the usefulness or durability of the sponges but were added for the sole purpose of increasing their weight, and sold such "loaded" sponges without disclosing the fact that their weight had been artificially increased, thereby defrauding, deceiving, and misleading retailers and consumers and enabling him to secure business on a false and fictitious basis; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Emil Bloch, 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 that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Emil Bloch, is a resident of the State of New York, having his principal office and place of business located at the city of New York, State of New York; that for more than one year last past respondent has been and now is engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other 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 in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of New York, State of New York, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States and more particularly from the State of Florida and foreign countries to and through the city of New York, State of New York, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring, others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.

PAR. 4. That respondent, for more than a year last past, knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and dis-

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posing of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Emil Bloch, a sole trader, doing business under the name and style of Emil Bloch, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Emil Bloch, is a sole trader, doing business under the name and style of Emil Bloch, having his principal office and place of business located at the city of New York,

in the State of New York, and is now and at all times hereinafter mentioned, has been engaged in the business of selling and shipping sponges from the city of New York, in the State of New York, to purchasers thereof located throughout the different States of the United States and the District of Columbia, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of his business respondent, for more than two years prior to the filing of the complaint herein, had been engaged in artificially increasing the weight of sponges by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salt, glucose, glycerine, and sugar; that the substance or substances contained in said solution are incorporated into the texture of said sponges and remain in said sponges after the said sponges are dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances as aforesaid is commonly known to and designated by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight is artificially increased is referred to as "loading."

PAR. 3. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to sponges in the process of "loading" do not add in any way to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or substances introduced in the process of "loading" are generally washed out and lost.

PAR. 4. That in the conduct of his business respondent, for more than two years prior to the filing of the complaint herein, had been selling and shipping by weight in interstate commerce sponges "loaded" by him as aforesaid to purchasers thereof, including among others retail dealers handling sponges and large consumers, such as garages, painters, decorators, office buildings, and manufacturing concerns; that respondent in selling said "loaded" sponges to said

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retail dealers and said consumers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased.

PAR. 5. That the "loading" of sponges and the sale of "loaded" sponges by respondent as aforesaid is a fraudulent and deceptive practice and is designed and calculated to, and does, defraud, deceive, and mislead retail dealers and consumers; that the practice of "loading" as aforesaid is designed and calculated to and does enable respondent to sell said "loaded" sponges on a false and fictitious basis and to secure business on a false and fictitious basis to the injury of competitors of said respondent who do not sell "loaded" sponges and to the injury of the public.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, Emil Bloch, a sole trader, doing business under the name and style of Emil Bloch, and his agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce, by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

2. Selling for shipment in interstate commerce or shipping in interstate commerce any sponges the weight of which has been in-

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creased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

*It is further ordered,* That the respondent, Emil Bloch, a sole trader, doing business under the name and style of Emil Bloch, shall within 60 days after the service upon him of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist hereinbefore set forth.

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

Complaint.

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## FEDERAL TRADE COMMISSION

v.

ANDREW BLUM, A SOLE TRADER, DOING BUSINESS  
UNDER THE NAME AND STYLE OF R. BLUM.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 398—February 4, 1921.

## SYLLABUS.

Where an individual engaged in the sale by weight of sponges "loaded" by the addition of foreign substances which did not increase their usefulness or durability, but were added for the sole purpose of increasing their weight; with the knowledge and expectation that the same would be resold to retailers and large consumers without disclosing the fact that their weight had been artificially increased, sold such "loaded" sponges to packers and wholesalers without disclosing the amount of such "loading," thereby enabling such packers and wholesalers to mislead and deceive retailers and consumers who unwittingly bore, in whole or in part, the cost of such "loading";

With the effect of aiding in the misleading and deception of retailers and consumers, of enabling it and its packer and wholesale purchasers to secure business on a false and fictitious basis, and of forcing competitors also to sell "loaded" sponges; to the injury of competitors who did not sell "loaded" sponges and to the injury of the public:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that R. B. Blaum, 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 that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, R. B. Blaum, is a resident of the State of Massachusetts, having his principal office and place of business located at the city of Boston, State of Massachusetts. That for more than one year last past respondent has been and now is

engaged in purchasing sponges in other States of the United States and foreign countries and in the sale and shipment of said sponges to persons, firms, copartnerships, and corporations in other 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 in the conduct of its business respondent purchases sponges in the State of Florida and other States of the United States and foreign countries and causes the same to be transported through other States of the United States to its place of business in the city of Boston, State of Massachusetts, where the same are sold and shipped to purchasers and dealers in different States and Territories of the United States and the District of Columbia, and that there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said sponges between and among the various States and Territories of the United States and more particularly from the State of Florida and foreign countries to and through the city of Boston, State of Massachusetts, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That respondent for more than a year last past has knowingly and deceptively engaged in and is now knowingly and deceptively engaged in loading, doping, and saturating sponges with foreign matter, such as glucose, sand, molasses, Epsom salts, and lead, and knowingly and deceptively caused and procured, and is now knowingly and deceptively causing and procuring, others to so load, dope, or saturate sponges with the aforesaid foreign matter, with the intent and purpose of selling and disposing of said sponges by weight, per pound basis, in commerce as aforesaid, thereby deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges doped, loaded, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges as, and for, pure unadulterated sponges; that the effect and result of the aforesaid loading, doping, or saturating sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of loading, doping, or saturating sponges with foreign matter as aforesaid is to impair the durability, quality, and purity of said sponges.



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PAR. 4. That respondent for more than a year last past knowingly and deceptively purchased and sold, by weight, per pound basis, and is still knowingly and deceptively purchasing, selling, and disposing of, by weight, per pound basis, in commerce as aforesaid, large quantities of sponges, loaded, doped, or saturated with foreign matter such as glucose, sand, molasses, Epsom salts, and lead, with the intent and purpose of deceptively increasing and falsifying the weight of said sponges, creating a fictitious price therefor, deceiving, defrauding, and misleading customers and consumers who can not readily differentiate and distinguish between pure unadulterated sponges and sponges loaded, doped, or saturated with foreign matter, as aforesaid, to purchase and pay for, by weight, per pound basis, such loaded, doped, or saturated sponges, as, and for, pure unadulterated sponges; that the effect and result of the aforesaid purchase and sale of loaded, doped, or saturated sponges is to create a fictitious price for said sponges in competition with competitors who purchase and sell pure unadulterated sponges, thereby causing prejudice and injury to competitors, or may cause prejudice and injury to competitors; and other effects; that the further effect of purchasing and selling sponges loaded, doped, or saturated with foreign matter, in commerce as aforesaid, is to impair the durability, quality, and purity of said sponges.

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

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Andrew Blum, a sole trader, doing business under the name and style of R. Blum, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Andrew Blum, is a sole trader, doing business under the name and style of R. Blum, having his principal office and place of business located at the city of Boston, in the State of Massachusetts, and is now and at all times hereinafter mentioned has been engaged in the business of selling and shipping sponges from the city of Boston, in the State of Massachusetts, to purchasers thereof located throughout the different States of the United States and the District of Columbia, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That in the conduct of his business respondent, for more than two years prior to the filing of the complaint herein, had been engaged in purchasing from sponge packers located at the city of New York, in the State of New York, and the city of Tarpon Springs, in the State of Florida, sponges whose weight had been artificially increased by said sponge packers by a process of soaking said sponges in a solution of a substance or substances such as salt, Epsom salts, glucose, glycerine, and sugar; that the substance or substances contained in said solution were incorporated into the texture of said sponges and remained in said sponges after said sponges were dried; that the said process of artificially increasing the weight of sponges by the addition of a substance or substances, as aforesaid, is commonly designated and referred to by sponge packers as "loading"; that the sponges whose weight has been thus artificially increased are designated and referred to by sponge packers as "loaded" sponges. When hereinafter mentioned, sponges whose weight has been thus artificially increased are referred to as "loaded" sponges, and the process by which the weight has been artificially increased is referred to as "loading."

PAR. 3. That the total cost of "loading" 1 pound of sponge, including the cost of ingredients and labor, is approximately 20 cents; that the substance or substances added to sponges in the process of "loading" do not add in any way to the usefulness or durability of the sponges and do not enable them better to serve any of the purposes for which sponges are employed; that the sole purpose of "loading" is to increase the weight of the sponges while they are in the channels of commerce before they have reached the ultimate user; that when said sponges are put into use the substance or substances introduced in the process of "loading" are generally washed out and lost.

PAR. 4. That in the conduct of his business respondent, for more than two years prior to the filing of the complaint herein, had been

## Findings.

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selling and shipping by weight in interstate commerce the "loaded" sponges purchased by him as aforesaid to purchasers thereof, including, among others, wholesale dealers handling sponges; that respondent in selling said "loaded" sponges to said wholesale dealers did not disclose or make known to said wholesale dealers the amount of matter artificially added to said sponges; that said wholesale dealers did not know the amount of matter artificially added to said sponges; that the "loading" of said sponges was paid for by said wholesale dealers.

PAR. 5. That said wholesale dealers who purchased said "loaded" sponges from respondent in turn resold said "loaded" sponges by weight to purchasers thereof, including, among others, retail dealers, such as dealers in the drug, hardware, and paint and oil lines, and large consumers of sponges, such as garages, painters, decorators, office buildings, and manufacturing concerns; that said wholesale dealers did not disclose or make known to said retail dealers or to said consumers that said sponges were "loaded"; that said retail dealers and said consumers did purchase and pay for by weight said "loaded" sponges as and for sponges whose weight had not been artificially increased by "loading" as aforesaid; that respondent sold said "loaded" sponges to said wholesale dealers with the knowledge and expectation that said "loaded" sponges would be resold by said wholesale dealers to said retail dealers and said consumers in a manner calculated to deceive and mislead and actually deceiving and misleading said retail dealers and said consumers; that the cost of the substance or substances added to said sponges by the process of "loading," and of the labor by which said substance or substances were introduced into said sponges, was ultimately borne, in whole or in part, by said retail dealers and said consumers, without their knowledge.

PAR. 6. That the sale of "loaded" sponges by respondent, as aforesaid, is a fraudulent and deceptive practice and results in injury to the public; that it enables said wholesale dealers who purchase said "loaded" sponges to resell said sponges as and for sponges whose weight has not been artificially increased and in the natural course of business causes such result; that the practice of "loading," as aforesaid, is calculated to and does enable respondent and said wholesale dealers who resell said "loaded" sponges to secure business on a false and fictitious basis to the injury of competitors of said respondent and to the injury of competitors of said wholesale dealers who do not sell "loaded" sponges and to the injury of the public.

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PAR. 7. That the sale of "loaded" sponges by respondent, as aforesaid, has the tendency and capacity to, and does, force competitors of respondent also to sell "loaded" sponges, to the injury of competitors who do not sell "loaded" sponges and to the injury of the public.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, Andrew Blum, a sole trader, doing business under the name and style of R. Blum, and his agents, servants and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Increasing the weight of sponges intended for sale and subsequent shipment in interstate commerce, by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar or any other substance producing the like effect.

2. Selling for shipment in interstate commerce, or shipping in interstate commerce, any sponges the weight of which has been increased by soaking them in a solution of salt, Epsom salts, glycerine, glucose, or sugar, or any other substance producing the like effect.

*It is further ordered,* That the respondent, Andrew Blum, a sole trader doing business under the name and style of R. Blum, shall within 60 days after the service upon him of a copy of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist, hereinbefore set forth.

Commissioners Murdock and Nugent took no part in the final consideration or decision of this case.

Complaint.

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FEDERAL TRADE COMMISSION  
v.  
UNITED RENDERING COMPANY ET AL.

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

Docket 159.—February 5, 1921.

SYLLABUS.

Where concerns engaged in the rendering business in or near Philadelphia, acting through a corporation organized by them for that purpose, paid prohibitive and unwarranted prices for raw materials in Trenton and Asbury Park, N. J., in order to punish a Trenton competitor which had begun purchasing raw materials in the Philadelphia market, with resulting loss of money to said competitor and to the successor to which it was forced by said loss to sell; and

Where a corporation, through its employees, interfered with the business of a competitor by causing its automobiles to follow said competitor's trucks for the purpose of spying upon its business and customers in order to, and with the effect of, hindering, delaying, and embarrassing said competitor in the conduct of its business:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the United Rendering Co., M. L. Shoemaker & Co. (Inc.), the Berg Co., the D. B. Martin Co., Consolidated Dressed Beef Co., Baugh & Sons Co., Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser, 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 power 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 United Rendering Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and factory located at the city of Trenton, in said State; that M. L.

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Shoemaker & Co. (Inc.) 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 factory located at the city of Philadelphia, in said State, and the respondent Winfield S. Allen is the vice president and general manager of said company; that the Berg 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 factory located at the city of Philadelphia, and the respondent Nathan Berg is an officer and stockholder of said company; that the respondent the D. B. Martin Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and factory at the city of Philadelphia, in the State of Pennsylvania, and the respondent F. W. English is secretary of the said company; that the respondent Consolidated Dressed Beef 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 factory at the city of Philadelphia, and the respondent Christopher Offenhauser is a director and stockholder in said corporation; that the respondent Baugh & Sons 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 factory at the city of Philadelphia; that the respondent the D. B. Martin Co. is a stockholder in the respondent the United Rendering Co., and the respondents Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser are each and all of them stockholders and officers of the respondent the United Rendering Co.; that the respondent corporations are now and for more than one year last have been engaged in the business of refining animal fats and selling their products throughout the States of the United States and the Territories thereof in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondent corporations purchase large amounts of raw materials in different States of the United States and cause the same to be transported through other States to their refineries, where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States and Territories of the United States and the District of Columbia; that after such products are so manufactured 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

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products between and among the various States of the United States, and especially to and through the cities of Philadelphia, State of Pennsylvania, and Trenton, State of New Jersey, and therefrom to and through other States and Territories of the United States.

PAR. 3. That the respondents, while conducting their business generally at a profit, are now, and for more than one year last past have been, wrongfully and unlawfully engaged in a combination of conspiracy among themselves entered into, carried out, and continued with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in the business of refining animal fats and the sale of their other products in interstate commerce by purchasing and offering to purchase raw materials necessary in the manufacture of their products in certain local areas, to wit, in and about the city of Philadelphia, State of Pennsylvania, and the city of Trenton, State of New Jersey, at and for prices unwarranted by trade conditions, and so high as to be prohibitive to small competitors in such areas; that such prices were calculated and designed to and did punish certain competitors in such areas who refused to become a party to a working arrangement offered by respondents to such competitors whereby competition in bidding for such raw materials was to be eliminated in and about the said city of Philadelphia.

PAR. 4. That the respondent M. L. Shoemaker & Co. (Inc.), through and by their agents, servants, and employees, for more than one year last past have interfered with the business of certain of their competitors by causing certain of said respondent's automobiles to follow the trucks of certain of its competitors for the purpose of spying upon the business and customers of said competitors; that such spying upon the business and customers of said competitors was calculated and designed to and did, hinder, delay, and embarrass said competitors in the conduct of their business.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, United Rendering Co., M. L. Shoemaker & Co. (Inc.), the Berg Co., the D. B. Martin Co., Consolidated Dressed Beef Co., Baugh & Sons Co., Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser, charging them, and each of them, with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents having entered their appearance by their respective attorneys

and having filed their answers herein (except that the United Rendering Co., respondent, did not file an answer, but entered its appearance), hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before Everett M. Hawley, an examiner of the Federal Trade Commission theretofore duly appointed, all of the respondents having waived the introduction of evidence in denial of the charges in said complaint.

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

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent M. L. Shoemaker & Co. (Inc.) is a corporation organized under the laws of the State of Pennsylvania, with its principal office and factory located in the city of Philadelphia, and the respondent Winfield S. Allen is the vice president and general manager of said company. That the respondent the Berg Co. is a Pennsylvania corporation, with its principal office and factory located in the city of Philadelphia, and the respondent Nathan Berg is an officer and stockholder in said company. That the respondent the D. B. Martin Co. is a Delaware corporation, with its principal office and factory located in the city of Philadelphia, and the respondent F. W. English is the secretary of said company. That the respondent Consolidated Dressed Beef Co. is a Pennsylvania corporation, with its principal office and factory located in the city of Philadelphia, owning three-fourths of the capital stock of a corporation known as the Philadelphia Animal Products Co., which last-named company conducts a rendering business in the city of Philadelphia and purchases raw materials for such business in the name of the respondent Consolidated Dressed Beef Co., and that the respondent Christopher Offenhauser is an officer of the Consolidated Dressed Beef Co. and is manager of the said the Philadelphia Animal Products Co. and owns one-fourth of the capital stock of the said the Philadelphia Animal Products Co. That the respondent Baugh & Sons Co. is a Pennsylvania corporation, with its principal office and factory located in the city of Philadelphia. That all of the aforementioned respondent corporations are now and have been for more than one year last past engaged in the business of refining animal fats and selling their products throughout the States of the United States in competition with other persons, firms, copartnerships, and corporations similarly engaged, and that in the conduct of their



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business the aforementioned corporations purchase large amounts of raw materials in different States of the United States and cause the same to be transported to their refineries where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States of the United States, and that after such products are so manufactured they are continuously moved to and from and among other States of the United States and there is continuously and has been at all times mentioned in the complaint (excepting as to M. L. Shoemaker & Co. (Inc.), which was not incorporated until March 27, 1917, from which time it has purchased raw materials in different States of the United States and caused the same to be transported to its refinery where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States of the United States) 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 Philadelphia, State of Pennsylvania, and the city of Trenton, State of New Jersey, and therefrom to and through other States and Territories of the United States.

PAR. 2. That for a number of years prior to September, 1915, all of the individuals, respondents, named in the foregoing paragraph, together with representatives of respondent Baugh & Sons Co., had been holding and attending meetings in the city of Philadelphia for the purpose of fixing and maintaining prices to be paid butchers in the city of Philadelphia and the surrounding territory for their fats, bones, suet, and similar materials, and for the purpose also of agreeing upon divisions of territory in which there would be no competition in the purchase of raw materials. That for the purpose of carrying out agreements made at these meetings the corporation respondents mentioned in the foregoing paragraph (excepting M. L. Shoemaker & Co. (Inc.), which did not become a corporation until Mar. 27, 1917), and M. L. Shoemaker & Co. (Ltd.), of which the respondent, Winfield S. Allen, was an officer and which was dissolved December 15, 1916, refused to take customers from each other and paid practically the same prices for the various materials purchased, and that they purchased only in certain agreed territories, the effect of all of which was to keep down the price of raw materials.

PAR. 3. That the Brown Co. was a corporation organized under the laws of New Jersey in 1912, with its principal factory and place of business located at Trenton, N. J. It commenced business in 1912 with a paid-in capital stock of \$25,000, and its president was David G. Weil, of the firm of Sternfeld & Weil, hide dealers in Phila-

Philadelphia, Pa., carrying on its business of rendering fats, bones, suet, and kindred materials at its factory in Trenton, N. J., securing its raw materials from which it rendered its finished products from butcher shops located in the city of Trenton, aforesaid, and in the surrounding territory in New Jersey. After its raw materials were manufactured into the finished products, such products were sold and shipped to purchasers in various States of the United States and were sold in competition with other persons, firms, copartnerships, and corporations similarly engaged. In September, 1915, it was decided by the officers of the Brown Co. to increase the volume of its raw materials by sending a wagon into Philadelphia, Pa., for the purpose of purchasing from butcher shops in that city fats, bones, and suet and kindred materials, which were to be transported from Philadelphia, Pa., to the factory of the Brown Co. at Trenton, N. J., to be rendered into finished products. This was done, and during the month of September, 1915, the Brown Co. acquired 70 customers in Philadelphia, Pa., from whom it purchased raw materials which it transported from Philadelphia, Pa., to its factory in Trenton, N. J., where those materials were rendered into the finished products.

PAR. 4. That when the Brown Co. first sent its wagon into Philadelphia the individuals, respondents, held a meeting and decided to unite their efforts and the efforts of the rendering companies they were respectively identified with against the Brown Co. to compel it to cease buying raw materials in the city of Philadelphia. This meeting was attended by a representative of Baugh & Sons Co. Efforts were made to induce the Brown Co. to withdraw from the Philadelphia field. F. W. English, in behalf of the persons who attended the above-mentioned meeting, and in behalf of the firms represented at that meeting, asked David G. Weil, president of the Brown Co., to withdraw the wagon of the Brown Co. from Philadelphia and cease collecting raw materials in the city of Philadelphia. When Weil would not accede to that request, English said that the Brown Co. would be compelled to cease buying raw materials in Philadelphia because the corporations for which he was spokesman would compete with the Brown Co. by way of purchasing raw materials in Trenton, N. J., whereby the Brown Co. would be compelled to withdraw from Philadelphia.

PAR. 5. That the respondent, the United Rendering Co., was then organized, its charter being dated October 8, 1915. The amount of paid-in capital stock was \$10,000, which was paid as follows: M. L. Shoemaker & Co. (Ltd.) paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to Winfield S. Allen, respondent; the D. B. Martin Co.,

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respondent, paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to F. W. English, respondent; the Berg Co., respondent, paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to Nathan Berg, respondent; the Consolidated Dressed Beef Co., respondent, paid \$2,500, for which two stock certificates, one for 20 and the other for 5 shares of the par value of \$100 each, were issued to Christopher Offenhauser, respondent. While Daugh & Sons Co. did not contribute to the paid-in capital stock of the United Rendering Co., it agreed that it would pay one-fifth of the loss of the United Rendering Co. up to an amount equal to one-fifth of the paid-in capital stock of \$10,000 of the United Rendering Co., respondent. That the said persons, respondents, in whose names certificates for shares of stock in the United Rendering Co., respondent, were issued were the officers of the United Rendering Co., respondent, and continued to be officers of that company until June 4, 1918.

PAR. 6. That Winfield S. Allen, respondent, president of the United Rendering Co., respondent, called on Randolph H. Miller, a stockholder and director of the Brown Co., who lived at Asbury Park, N. J., and tried to induce the said Miller to use his influence to have the Brown Co. withdraw from Philadelphia. Allen told Miller that he, Allen, was not making any threats, but that the Brown Co. would not make any money in Philadelphia. On this occasion Allen requested the assistance of Miller to obtain for him, Allen, the control of the Brown Co.'s capital stock, which request was refused. This visit of Allen's to Miller took place at about the time of the organization of the United Rendering Co.

PAR. 7. That on November 1, 1915, the United Rendering Co. began purchasing raw materials in the city of Trenton, N. J., under the supervision of one Milton Wylie Brown, a former employee of the Brown Co., and who by reason of having been a former employee of that company, was acquainted with the Brown Co.'s customers. In purchasing these raw materials the United Rendering Co., through Milton Wylie Brown, paid prices which were higher than the Brown Co. was paying, unwarranted by trade conditions, and prohibitive to competitors. By paying such prohibitive and unwarranted prices during the month of November, 1915, the United Rendering Co. secured 32 customers who had immediately previously sold their raw materials to the Brown Co. From December 1, 1915, to April 1, 1916, 11 other customers of the Brown Co. were taken by the United Rendering Co. As a direct result of the loss

of customers (by reason of which the amount of tonnage of the Brown Co. was decreased), and because of the high prices which it was compelled to pay to the customers it kept, the Brown Co. sustained a financial loss, which loss finally forced it to sell out to one Edward T. Murphy in December, 1916. The raw materials collected by the United Rendering Co. were not rendered at Trenton, but were shipped to Philadelphia by boat, railroad, or truck, and there refined into the finished products by the Consolidated Dressed Beef Co., the Berg Co., the D. B. Martin Co., and M. L. Shoemaker & Co. (Ltd.). For a short time after the United Rendering Co. commenced business, the corporations last above mentioned in turn rendered the raw materials collected by the United Rendering Co., but later the said raw materials were sold to the highest bidder among the Berg Co., Consolidated Dressed Beef Co., the D. B. Martin Co., and M. L. Shoemaker & Co. (Ltd.). The bids were made at meetings of the board of directors of the United Rendering Co. held in the Bellevue-Stratford Hotel, Philadelphia, and attended by a representative of Baugh & Sons Co. The prices bid and paid by the respondents for the materials collected by the United Rendering Co. were, from November, 1915, to November, 1916, in excess of the prices the respondents were paying for similar materials in the city of Philadelphia.

PAR. 8. That the purpose of the respondents in organizing the United Rendering Co. and in paying through it prohibitive prices for raw materials in Trenton, N. J., was to punish the Brown Co. for continuing the purchase of raw materials in Philadelphia.

PAR. 9. That in April, 1916, the United Rendering Co. purchased the fat route of one Levy, who had been purchasing raw materials in the city of Asbury Park, N. J., in competition with the Flavell Co., of which Randolph H. Miller, a stockholder and director of the Brown Co., was a stockholder and officer. The United Rendering Co. thereupon purchased raw materials in Asbury Park at prices unwarranted by trade conditions, and as a result the Flavell Co. lost to the United Rendering Co. a number of customers, and as a further result the Flavell Co. did not make any profit from the business it conducted. That the purpose of the United Rendering Co. in going to Asbury Park was to compel the Brown Co. to cease buying raw materials in Philadelphia. That in September, 1916, after Randolph H. Miller had sold his interest in the Brown Co., the Flavell Co., of which he was then President, paid the United Rendering Co. \$5,000, for which the United Rendering Co. agreed to cease buying raw materials in the territory covered by the Flavell

## Findings.

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Co. That the only physical assets received by the Flavell Co. in the above-mentioned transaction were a horse and wagon.

PAR. 10. That the Brown Co. was dissolved and its business continued by a new corporation organized December 1, 1916, and known as the Brown Co. (Inc.). The chief stockholder of the Brown Co. (Inc.), was Edward T. Murphy. That in December, 1916, the respondents (excepting M. L. Shoemaker & Co. (Inc.), which was not organized until March 27, 1917), through Nathan Berg, attempted to induce Murphy to withdraw the Brown Co. (Inc.) from the Philadelphia territory and offered the Brown Co. (Inc.) in return \$35,000 cash, and in addition, all the trade which the United Rendering Co. had acquired in Trenton, N. J., and vicinity. That when Murphy refused this offer, the respondents then raised the prices they were paying butchers in the city of Philadelphia for raw materials by reason of which the Brown Co. (Inc.), suffered a loss of \$30,000 in the period from December 1, 1916, to April 1, 1917, when Murphy sold his holdings in the Brown Co. (Inc.) to the American Agricultural Chemical Co.

PAR. 11. That when the United Rendering Co. was organized on October 8, 1915, the president thereof, Winfield S. Allen, was also the vice president and general manager of M. L. Shoemaker & Co. (Ltd.), a limited partnership engaged in the rendering business, with its factory and principal place of business located in Philadelphia. That the said Allen continued as president of the United Rendering Co. until June 4, 1918. That he remained vice president and general manager of M. L. Shoemaker & Co. (Ltd.), until its dissolution in December, 1916. Upon the dissolution of M. L. Shoemaker & Co. (Ltd.) the assets of the firm became the assets of a new corporation known as M. L. Shoemaker & Co. (Inc.), which was organized March 27, 1917, under the laws of the State of Pennsylvania, and which commenced business on April 1, 1917. That the said Allen, on March 27, 1917, became a stockholder and officer of M. L. Shoemaker & Co. (Inc.), and at the time testimony in this proceeding was concluded, was an officer and stockholder of M. L. Shoemaker & Co. (Inc.). That after April 1, 1917, M. L. Shoemaker & Co. (Inc.) was represented by the said Allen at meetings of the United Rendering Co., and purchased raw materials from the United Rendering Co.

PAR. 12. That the president of M. L. Shoemaker & Co. (Ltd.) knew of the connection between that company and the United Rendering Co. After the dissolution of M. L. Shoemaker & Co. (Ltd.), and before the organization of M. L. Shoemaker & Co. (Inc.), the trustees for the winding up of the business of M. L. Shoemaker

& Co. (Ltd.) sold to Winfield S. Allen the shares of stock held by Winfield S. Allen for M. L. Shoemaker & Co. (Ltd.) in the United Rendering Co. That these shares of stock were sold at private sale to Winfield S. Allen, who was one of the trustees in the winding up of the business of M. L. Shoemaker & Co. (Ltd.). Another of the trustees was William B. Adamson, who had been president of M. L. Shoemaker & Co. (Ltd.), and who became on March 27, 1917, the president of M. L. Shoemaker & Co. (Inc.). That the stock so sold by the trustees to said Allen at private sale was the only part of the assets of M. L. Shoemaker & Co. (Ltd.) disposed of by the trustees at private sale.

PAR. 13. That while the respondents, from November 1, 1915, to September 1, 1916 (excepting M. L. Shoemaker & Co. (Inc.), which had not then been organized), were paying prohibitive prices in Trenton and prices unwarranted by trade conditions and prohibitive to competitors, the respondents, Consolidated Dressed Beef Co., the D. B. Martin Co., the Berg Co., and Baugh & Sons Co., were doing business generally at a profit.

PAR. 14. That the United Rendering Co., from November 1, 1915, to January 1, 1917, sustained a substantial loss in the purchase of raw materials.

PAR. 15. That on or about June 4, 1918, Winfield S. Allen, respondent; Christopher Offenhauser, respondent; and Nathan Berg, respondent, resigned their respective offices in the United Rendering Co.

PAR. 16. That during the month of June, 1917, servants and employees of respondent, M. L. Shoemaker & Co. (Inc.), interfered with the business of a competitor, the Brown Co. (Inc.), by causing certain of said respondent's automobiles to follow the trucks of the Brown Co. (Inc.) for the purpose of spying upon the business and customers of the said the Brown Co. (Inc.); that such spying upon the business and customers of said the Brown Co. (Inc.) was calculated, designed to, and did hinder, delay, and embarrass the said Brown Co. (Inc.), a competitor of M. L. Shoemaker & Co. (Inc.), in the conduct of its business.

#### CONCLUSIONS.

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of section 5 of an act of 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.

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## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respective respondents (excepting that the United Rendering Co., respondent, which did not file answer, entered its appearance), the testimony and evidence, and the argument of counsel, and the Commission having made its findings as to the facts with its conclusions that the respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That the respondents, the United Rendering Co., the Berg Co., the D. B. Martin Co., Consolidated Dressed Beef Co., Baugh & Sons Co., Winfield S. Allen, Nathan Berg, F. W. English, and Christopher Offenhauser, do cease and desist from engaging in a combination or conspiracy among themselves or with others, with the intent and purpose of discouraging, stifling, and suppressing competition in the business of refining animal fats and the sale of their other products in interstate commerce, by purchasing and offering to purchase raw materials necessary in the manufacture of their products, in certain local areas, to wit, in and about the city of Trenton, N. J., or elsewhere, at and for prices unwarranted by trade conditions and so high as to be prohibitive to competitors in such areas.

*And it is further ordered,* That the respondent, M. L. Shoemaker & Co. (Inc.), do cease and desist, through and by their agents, servants, and employees, from interfering with the business of any of their competitors in the purchase of raw materials used in the refining of animal fats by causing said respondent's automobiles to follow the trucks of such competitors for the purpose of spying upon the business and customers of such competitors, when calculated and designed to hinder, delay, and embarrass said competitors in the conduct of their business.

*And it is further ordered,* That the respondents make and file with the Commission, within 30 days from the date of service hereof, a report in writing setting forth in detail the manner and form in which this order has been conformed to.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## RAYMOND BROTHERS-CLARK COMPANY.

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

Docket 460—February 23, 1921.

## SYLLABUS.

Where a corporation dealing in groceries at wholesale,

- (a) Failed to inform a competing concern, which was engaged also in retailing, of the arrival of a much-needed shipment in a "pool" car consigned to it by a manufacturer, although it promptly informed other concerns whose shipments arrived in said car;
- (b) Kept the shipment belonging to such competitor in its possession more than a month, meanwhile protesting to the manufacturer against his selling directly to said competitor and trying to secure a jobber's commission on the transaction; and
- (c) Threatened to return to the manufacturer all goods of his manufacture which it had in stock if the commission claimed were not allowed or if further sales were made directly to said competitor, and to cease buying from him in future, and did so cease;

With the effect of hindering competition between the competing concern and its competitors, and with the intent and tendency to limit the manufacturer in the selection of his customers, in restraint of his trade, and to restrict the competing concern in its purchases of commodities in competition with other buyers:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Raymond Bros.-Clark Co., hereinafter referred to as the respondent, has been and is violating 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 Basket Stores Co. is a corporation organized under the laws of Nebraska, having its principal place of business at Omaha, in the State of Nebraska, and also having branch



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stores and places of business at other places, including Lincoln, in said State of Nebraska; that the said company is engaged in the business of buying and selling in wholesale quantities 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 Basket Stores Co. purchases the products dealt in by it in the various States and Territories of the United States and transports the same through other States and Territories to the cities of Omaha and Lincoln, in the State of Nebraska, where such commodities are resold, and there is continually and has been at all times hereafter mentioned a constant current of trade and commerce in the commodities so purchased by the said Basket Stores Co. between and among the various States and Territories of the United States; that the said Basket Stores Co. is in active competition with the respondent, Raymond Bros.-Clark Co.

PAR. 2. That the respondent, Raymond Bros.-Clark Co., is a corporation organized under the laws of the State of Nebraska, having its principal place of business at Lincoln in said State, and is engaged in the business known generally as that of wholesale grocer; that the said respondent purchases the commodities dealt in by it in the various States and Territories of the United States and transports the same through other States and Territories to said city of Lincoln, in said State of Nebraska.

PAR. 3. That the T. A. Snider Preserve Co. is a corporation manufacturing certain food products which are sold and transported in the various States and Territories of the United States.

PAR. 4. That in or about the month of September, 1918, the said T. A. Snider Preserve Co. caused to be shipped and transported from Marion, in the State of Indiana, to the city of Lincoln, in the State of Nebraska, certain products manufactured by it which had been sold to and were intended for delivery to the said Basket Stores Co. at said city of Lincoln, Nebr.; that the said products were shipped and transported in a car which also contained certain products of the said T. A. Snider Preserve Co. which had been ordered by and were intended for delivery to the respondent at said Lincoln, Nebr.; that when the said car arrived the respondent took possession of said products intended for delivery to said Basket Stores Co. and declined to allow delivery of the same to the said Basket Stores Co. unless the said T. A. Snider Preserve Co. paid to the respondent the sum of \$100 as and for a jobber's profit upon the sale of said goods; that thereafter the said respondent at divers times attempted to

## Findings.

coerce and compel the said T. A. Snider Preserve Co. to refuse to recognize said Basket Stores Co. as a jobber and to refuse to sell to said Basket Stores Co. at prices regularly charged to recognized jobbers, and at divers times has represented to said T. A. Snider Preserve Co. that the said Basket Stores Co. was not a legitimate jobber and had never been such, but was engaged in the retail grocery business; and said respondent has at divers times since the month of September, 1918, threatened to withdraw its patronage from said T. A. Snider Preserve Co. if said company sold to or recognized said Basket Stores Co. as a jobber and refused to pay to said respondent said sum of \$100 aforesaid; that the purpose and effect of the aforesaid acts and practices of the respondent were and are to cut off the supplies of its said competitor, said Basket Stores Co., to stifle, suppress, and prevent competition between respondent and said Basket Stores Co., and to interfere with the right of said Basket Stores Co. and said T. A. Snider Preserve Co. to deal freely with each other in interstate commerce upon terms mutually agreed upon between them.

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

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

The respondent having entered its appearance by its attorneys and filed its answer herein, thereupon witnesses were examined and evidence received in support of the allegations of said complaint and on behalf of the respondent before an examiner of the Federal Trade Commission, theretofore duly appointed, and the testimony so taken was reduced to writing and filed in the office of the Commission, whereupon the proceeding came on for final hearing by said Commission, and it having heard argument of counsel, and having duly considered the complaint, the answer thereto, and the evidence adduced, and being fully advised in the premises, and being of the opinion that the method of competition in question is prohibited by said act, makes this its report, stating its findings as to the facts:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent is a corporation organized under and existing by virtue of the laws of the State of Nebraska. Its principal place of business is at Lincoln, Nebr. Respondent's business is that of a wholesale grocer, buying groceries, provisions, and the like com-

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modities in wholesale quantities from the manufacturers thereof throughout the United States, which commodities are transported from points outside the State of Nebraska to the warehouse of the respondent at Lincoln, Nebr., and are resold and transported to customers in and beyond the State of Nebraska. The business operations of the respondent include sales and deliveries in Nebraska, Colorado, Kansas, Wyoming, South Dakota, and Montana, and its annual volume of business is approximately \$2,500,000. In the conduct of its business the respondent is in competition, among others, with the Basket Stores Co.

PAR. 2. The Basket Stores Co. is a corporation organized under and existing by virtue of the laws of the State of Nebraska. Its principal place of business is at Omaha, Nebr. The Basket Stores Co. conducts two lines of business—one, that of a wholesale grocer, and that of retail selling through a chain or organization of retail stores. As a wholesale grocer, the Basket Stores Co. maintains a warehouse at Omaha and a branch warehouse at Lincoln, Nebr. It buys groceries, provisions, and the like commodities in wholesale quantities from the manufacturers thereof throughout the United States, which commodities are transported from points outside the State of Nebraska to the warehouse of the Basket Stores Co. at Omaha and Lincoln, Nebr., and are resold in part and transported to customers within and outside of the State of Nebraska. This part of the Basket Stores Co.'s business is about 10 per cent of the total. The Basket Stores Co. was licensed as a wholesale grocery house by the United States Food Administration, which fact was known to the respondent. The Basket Stores Co. also operates a series or chain of retail stores, 72 in number, 4 of which are in Iowa, the remainder being located in Nebraska. There were, at this time, 18 stores operated by the Basket Stores Co. in Lincoln. The groceries, provisions, and like commodities distributed through these stores were supplied from the Basket Stores Co.'s warehouses. About 90 per cent of the company's business was done through these retail stores. The total annual volume of the Basket Stores Co.'s business is approximately \$2,500,000.

PAR. 3. In the month of September, 1918, a representative of F. A. Snider Preserve Co. solicited from the Basket Stores Co.'s officials, at its head office at Omaha, and obtained an order for commodities produced by the Snider Co., to be shipped to the warehouse of the Basket Stores Co. at Lincoln. The Snider Co. also secured orders from the respondent and other customers in neighboring communities. The commodities sold in and around Lincoln were placed by the Snider Co. in one car, consigned to respondent at Lincoln, mak-

ing up what is known as a "pool" car to get the benefit of the freight rate on a car-lot shipment. The Snider Co. sent to respondent a statement of the car contents, showing the various business houses for which certain specified goods were intended, the Basket Stores Co. and its purchase from Snider Co. being shown on this statement.

PAR. 4. This pool car consigned to respondent reached Lincoln, Nebr., on October 10, 1918, and was promptly unloaded and the contents distributed by respondents. Its own commodities were placed in its warehouse, the commodities belonging to business houses outside of Lincoln were reconsigned to them by local freight, and the other purchasers in Lincoln were notified of the arrival of their goods, and promptly obtained the same, except the Basket Stores Co. The commodities belonging to this company were stored in respondent's warehouse, the Basket Stores Co. was not notified of the arrival of these goods in Lincoln or of their presence in respondent's warehouse, and no opportunity to obtain its goods was afforded the Basket Stores Co. until November 15, 1918, when respondent notified the Basket Stores Co. of the presence of its property.

PAR. 5. The Basket Stores Co. was in need of these commodities for its trade, its stock of these goods was low, and the delay in receipt due to the actions and failure of the respondent to extend to the Basket Stores Co. the same course of dealing that it used with all the other owners of commodities contained in the pool car was a hindrance and an obstruction to the Basket Stores Co. in the conduct of its business in competition with the respondent and others in the wholesale trade and with its competitors in the retail trade.

PAR. 6. On October 8, 1918, prior to the arrival of the pool car at Lincoln, the respondent, having received the statement from F. A. Snider Preserve Co. regarding the contents of the car and the distribution to be made thereof, in writing protested to the Snider Co. against the sale direct to the Basket Stores Co., and asked for the allowance of the regular jobber's profit on the sale, as though made through respondent. The Snider Co. did not reply to this letter. Subsequent to the arrival of the car at Lincoln, the distribution of its contents to the owners thereof, except as to the Basket Stores Co., and while the goods purchased by that company were in respondent's custody, respondent wrote the Snider Co., on October 22, 1918, referring to the unanswered letter and asking what it was to charge the Snider Co. for checking out, unloading, and reshipping the other jobbers' goods. It likewise wrote the Snider Co. on the same day with reference to damage to goods in transit. In response to a request from the Snider Co. for payment, respondent wrote, on November 16, declining to make payment to the Snider Co. for goods pur-

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chased from it by the respondent until reply was made by the Snider Co. to respondent's letters (of October 8 and 22) and until allowance was made respondent for the jobbers' commission on the sale to the Basket Stores Co. The Snider Co. suggested that respondent remit, taking credit for amounts claimed, and explaining fully the reasons therefor. The respondent complied, deducting, among other amounts, the sum of \$100 as commission on the sale to the Basket Stores Co. This deduction, among others, the Snider Co. refused to allow, and returned the remittance. Whereupon, on December 16, respondent wrote the Snider Co., insisting upon the allowance of this commission, protesting against the action of the Snider Co. in selling direct to the Basket Stores Co., and threatening the Snider Co. with the cessation of respondent's business and return of all the goods produced by the Snider Co. then in respondent's stock, if this commission were not allowed and the Snider Co. continued direct sales to the Basket Stores Co.

PAR. 7. Early in January following, the Snider Co. sent a representative to Lincoln, who interviewed the president of the respondent in an attempt to obtain a settlement of the controversy, which was not successful. The respondent, in accordance with the statements in its letter of December 16th, ceased to purchase from the Snider Co.

## CONCLUSIONS.

The conduct of the respondent tended to, and did, unduly hinder competition between the Basket Stores Co. and others similarly engaged in business, and the intent and purpose of the respondent was also to press the F. A. Snider Co. to a selection of customers, in restraint of its trade, and to restrict the Basket Stores Co. in the purchase of commodities in competition with other buyers, and the conduct of the respondent tended to the accomplishment of the intent and purpose of respondent.

The acts and practices of the respondent, as hereinbefore set out, constitute unfair methods of competition in commerce among the States of the United States, and violate the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, the testimony and evidence, and the argument of counsel, and the Commission being of opinion that the method of

competition in question is prohibited by 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 having made its report in which it stated its findings as to the facts with its conclusions that the respondent has violated the provisions of said act:

*It is therefore ordered,* That the respondent Raymond Bros.-Clark Co., its officers and agents, forever cease and desist from directly or indirectly—

(1) Hindering or preventing any person, firm, or corporation in or from the purchase of groceries, provisions, or the like commodities direct from the manufacturers or producers thereof, in interstate commerce, or attempting so to do.

(2) Hindering or preventing any manufacturer, producer, or dealer in groceries, provisions, and the like commodities, in or from the selection of customers in interstate commerce, or attempting so to do.

(3) Influencing or attempting to influence any manufacturer, producer, or dealer in groceries, provisions, and the like commodities not to accept as a customer any firm or corporation with which the manufacturer, producer, or dealer in the exercise of a free judgment, has or may desire to have such relationship.

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

Complaint.

S F. T. C.

## FEDERAL TRADE COMMISSION

v.

## ALUMINUM COMPANY OF AMERICA.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF  
AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 248—March 9, 1921.

## SYLLABUS.

Where a corporation enjoying a monopoly in the manufacture and sale of pig aluminum and aluminum ingot, and also engaged, through its subsidiaries, in the manufacture and sale of sheet aluminum and products manufactured of aluminum, entered into and carried out an agreement with one of its chief competitors in the manufacture and sale of sheet aluminum, for the formation of a new corporation (the directorate of which, when formed, it controlled) to take over and operate said competitor's aluminum rolling mill, it to take two-thirds of the outstanding stock, a device successfully aimed at the acquisition of the control of said rolling mill and its products without direct acquisition of stock in said competing corporation and equivalent thereto in effect, and a device which (1) eliminated actual competition between it and its competitor in the manufacture and sale of sheet aluminum and aluminum cooking utensils, (2) prevented the new company from becoming its competitor in the manufacture and sale of sheet aluminum, (3) gave it a complete monopoly in the production and sale of certain much-used and important sizes of sheet aluminum manufactured in the United States, and tended to give it a complete monopoly of all sizes of sheet aluminum manufactured in the United States, and (4) was followed by the disappearance of a market in the United States for the sale of ingot or pig aluminum to aluminum rolling mills:

*Held*, That the acquisition and continued ownership of such stock, under the circumstances set forth, constituted a violation of section 7.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Aluminum Co. of America, hereinafter referred to as the respondent, has, during the year last past, violated and is violating section 7 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 this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Aluminum Co. of America, 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 Pittsburgh, in said State, now and at all times hereinafter mentioned engaged in the business of manufacturing and selling aluminum and aluminum products 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 the respondent, Aluminum Co. of America, in the conduct of its business, manufactures the aluminum and aluminum products so sold by it in its factory located at the city of Pittsburgh, State of Pennsylvania, and after such aluminum and aluminum 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 the said aluminum and aluminum products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and especially to and through the city of Pittsburgh, State of Pennsylvania, and therefrom to and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Aluminum Co. of America, a corporation engaged in commerce, as aforesaid, did, during the year 1918, in violation of section 7 of the Clayton Act, acquire a large part of the stock and share capital of the Aluminum Rolling Mill Co., a corporation also engaged in commerce, and that the said respondent, Aluminum Co. of America, ever since the time of said acquisition of said stock, has owned, and still does own, a large part of the stock and share capital of the said Aluminum Rolling Mill Co.; and that the effect of the acquisition of said stock and share capital, and the use of the same, either by voting or granting of proxies or otherwise, may be, and is to substantially lessen competition between the respondent, Aluminum Co. of America, and the Aluminum Rolling Mill Co., or to restrain such commerce, as aforesaid, in certain sections and communities, or tend to create a monopoly in such line of commerce.

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

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the Federal Trade Commission issued and served a complaint upon the



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respondent, Aluminum Co. of America, charging it with a violation of section 7 of said act.

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

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent Aluminum Co. of America is a corporation organized, existing, and doing business since 1888 under the laws of the State of Pennsylvania, with its principal office in the city of Pittsburgh in said State. The authorized capitalization of respondent is \$20,000,000 (all common stock), \$18,000,000 of which is outstanding. It is now and for many years since its organization has been engaged in the business of manufacturing and selling crude or pig aluminum and aluminum ingot throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries. The respondent has now and for many years has had a monopoly in the United States in said business, the competition which it has met in the United States coming from foreign companies importing crude or pig aluminum and aluminum ingot into this country. The respondent produces in the United States approximately one-half of the pig aluminum and aluminum ingot produced in the world. Pig aluminum and aluminum ingot are used for two general purposes, namely, for casting and for rolling into sheet. There is now and has been for many years in the United States a market for aluminum ingot known as secondary ingot, which is made from remelted aluminum, but such secondary ingots are not adaptable for conversion into aluminum sheet. Virgin ingot, of which the Aluminum Co. of America is now and has been for many years the only producer in the United States, is the only kind of aluminum ingot convertible into sheet aluminum. Respondent now, and for many years prior to 1918, has as a part of its business sold throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries all of the sheet aluminum manufactured by its subsidiaries for sale, and since the taking over by the Aluminum Rolling Mill Co. of the

aluminum-rolling mill of the Cleveland Metal Products Co., it has sold throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries all of the sheet aluminum produced by that mill. One-half of all of the sheet aluminum produced in the world is produced by the subsidiaries of the respondent, and the sale of the sheet aluminum produced by such subsidiaries has been and is controlled by respondent. Respondent now and for many years has had subsidiary corporations in the United States which fabricate aluminum in the form of wire, tubing, cooking utensils, and into general fabricated forms, and such subsidiaries and the respondent now and for many years have engaged in the business of selling such wire, tubing, cooking utensils, and general fabricated forms throughout the various States, Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. There are and have been since prior to 1918, in the United States, corporations in competition with the respondent and its subsidiaries in the manufacture and sale of aluminum cooking utensils, all of which companies, together with the respondent and its said subsidiaries, require sheet aluminum in the manufacture of their finished products. The sources of supply for sheet aluminum in the United States, prior to the outbreak of the European war in 1914, were from foreign companies and the respondent and its subsidiaries. In March, 1915, the Cleveland Metal Products Co., as hereinafter mentioned, became the only competitor of the respondent and its subsidiaries in the manufacture of sheet aluminum and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia, and in the latter part of 1916 the Bremer-Waltz Corporation, as hereinafter mentioned, became a competitor of the respondent and its subsidiaries in the manufacture of sheet aluminum and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia, and at or about the time that the Cleveland Metal Products Co. entered into negotiations with respondent for the sale of the former company's aluminum rolling mill, the United States Smelting & Aluminum Co. became a competitor of the respondent and its subsidiaries in the manufacture of sheet aluminum and in the sale thereof throughout the various States of the United States, the Territories thereof, and the District of Columbia. The Cleveland Metal Products Co., the Bremer-Waltz Corporation, and the United States Smelting & Aluminum Co. were the only competitors in America of the respondent and its subsidiaries in the manufacture and sale of sheet aluminum at the time the Cleveland Metal Products

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Co. disposed of its aluminum rolling mill as hereinafter mentioned, and the United States Smelting & Aluminum Co. was an inconsiderable factor in the trade.

PAR. 3. The Cleveland Metal Products Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio since 1910; and from 1910 to March 8, 1915, was engaged in the business of manufacturing enameled stove parts and enamel parts for other manufacturers using the same and in selling such parts throughout the various States and Territories of the United States and the District of Columbia. The Cleveland Foundry Co., an Ohio corporation with its principal office in Cleveland, Ohio, for many years up to January, 1917, was engaged in the business of manufacturing oil cooking stoves and oil heaters in which aluminum is used. Both of these companies, namely, the Cleveland Metal Products Co. and the Cleveland Foundry Co., used aluminum in crude and semicrude form and in the form of sheet. In January, 1917, the Cleveland Foundry Co. and the Cleveland Metal Products Co. were consolidated, the business of both companies being continued under the name of the Cleveland Metal Products Co., which by the consolidation had an authorized capitalization of \$5,000,000 in common stock and \$5,000,000 in preferred stock, \$4,000,000 of each class being issued. In 1912 the Cleveland Metal Products Co. conceived the idea of going into the business of manufacturing aluminum cooking utensils, and in the autumn of 1913 Fred W. Ramsay, president of the company, went to Europe, where he conferred with officials of various foreign companies importing aluminum ingot into this country, for the purpose of determining whether the Cleveland Metal Products Co. could obtain from sources other than respondent and its subsidiaries a supply of aluminum ingot in the event that it erected an aluminum rolling mill for the purpose of converting aluminum ingot into aluminum sheet, which aluminum sheet is the form of aluminum from which aluminum cooking utensils are made. If the Cleveland Metal Products Co. went into the business of manufacturing aluminum cooking utensils, it would be competing with subsidiaries of the Aluminum Co. of America in the sale of such utensils and with the respondent and its subsidiaries in the sale of sheet aluminum, and if it erected an aluminum rolling mill for the purpose of manufacturing its own aluminum sheet its only sources of supply of aluminum pig and aluminum ingot were from the Aluminum Co. of America or from foreign companies. The purpose of the president of the Cleveland Metal Products Co. in ascertaining whether he could buy aluminum ingot from foreign companies was to determine whether the Cleve-

land Metal Products Co. could be free and independent from the Aluminum Co. of America in the source of supply of aluminum ingot, and could compete with that company and its subsidiaries in the production and sale of aluminum sheet and in the manufacture and sale of aluminum cooking utensils. The president of the Cleveland Metal Products Co. having received assurances in Europe that his company could obtain ingot from foreign companies on satisfactory terms, returned to the United States, and in 1914 the Cleveland Metal Products Co. commenced the construction of an aluminum rolling mill. The mill was completed in 1915 and was put into operation in March of that year. It was a well-planned, well-designed, and well-working unit.

PAR. 4. The capacity of this aluminum rolling mill of the Cleveland Metal Products Co. was 250,000 pounds of aluminum sheet per month, and the mill was equipped to roll sheets of all sizes up to 60 inches in width by 120 inches in length. Twenty-seven per cent of the output of this mill was used by the Cleveland Metal Products Co. in the manufacture of its aluminum cooking utensils and other products in which sheet aluminum was necessary, and the balance of the output, 73 per cent, was sold in the open market to dealers in and users of sheet aluminum. The Cleveland Metal Products Co. thereby became and was until its rolling mill passed to respondent, in competition with respondent and its subsidiaries in the manufacture and sale in commerce of sheet aluminum and aluminum cooking utensils. A considerable part of the sheet-aluminum industry has been and is in the sale of sheet aluminum to the manufacturers of automobile bodies, in which aluminum sheet greater than 30 inches in width is necessary. The only sources of supply for such sheet in the United States from the time this rolling mill was built until shortly after the signing of the armistice of the World War on November 11, 1918, were from the respondent and its subsidiaries, the Cleveland Metal Products Co., and from small stocks of foreign companies on hand in this country when the Great War in Europe broke out. The only companies in the United States manufacturing aluminum sheet over 30 inches in width were the subsidiaries of the Aluminum Co. of America (respondent) and the Cleveland Metal Products Co., all which companies from 1915 until January of 1918 were confronted with a demand in excess of the supply. The total cost of the rolling mill erected by the Cleveland Metal Products Co., including 5,515 acres of land, the site of the mill, was \$227,154.64. From June 30, 1915, to December 31, 1915, the net profits of the Cleveland Metal Products Co. in the manufacture and sale of sheet aluminum was \$23,629.44. The net profits of the Cleveland

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Metal Products Co. in the manufacture and sale of sheet aluminum for the calendar year 1916 were \$219,009.25, and the net profits for the calendar year 1917 in the manufacture and sale of sheet aluminum were \$52,120.01. In addition, the Cleveland Metal Products Co. made a substantial profit in its general business. The sheet which it manufactured in excess of its own fabricating requirements it sold to various automobile-body builders, manufacturers of cooking utensils, and manufacturers of other products in which sheet aluminum is used. In the latter part of 1916 the Bremer-Waltz corporation, having completed a rolling mill at St. Louis, Mo., commenced the business of selling sheet aluminum which it rolled, but the largest sized sheet which its mill was capable of turning out was 30 inches in width. The United States Smelting & Aluminum Co., hereinbefore referred to, rolled aluminum sheet of a maximum width of 30 inches. In November, 1919, the Bremer-Waltz Corporation sold a part of its physical assets, consisting of its aluminum rolling mill, to the Aluminum Goods Manufacturing Co., 36 per cent of whose stock is owned by the Aluminum Co. of America and on whose directorate the Aluminum Co. of America is represented by two members. The Aluminum Goods Manufacturing Co. prior to the purchase by it of the rolling mill of the Bremer-Waltz Corporation had and still has two rolling mills, all of the output of which, together with all of the output of the mill purchased from the Bremer-Waltz Corporation, is used by the Aluminum Goods Manufacturing Co. itself in the manufacture of the finished products made by it, consisting principally of cooking utensils.

PAR. 5. Since 1917 the supply of aluminum sheet imported into this country and that manufactured in this country has not been equal to the demand.

PAR. 6. On February 17, 1918, the Aluminum Co. of America (respondent) and the Cleveland Metal Products Co. agreed to organize a third corporation under the laws of the State of Ohio, which third corporation was to purchase the aluminum rolling mill and the aluminum rolling-mill business of the Cleveland Metal Products Co. This corporation was not organized until March 20, 1918, although the rolling mill of the Cleveland Metal Products Co. was operated by the respondent, Aluminum Co. of America, for the new company from February 23, 1918, until and since the date of the incorporation of the new company, which new company was incorporated under the name "The Aluminum Rolling Mill Co." During the negotiations for the sale by the Cleveland Metal Products Co. of its aluminum rolling mill to the Aluminum Rolling Mill Co., the president of the Cleveland Metal Products Co. expressed to officers

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of the respondent a wish for an assurance that if the Cleveland Metal Products Co. went out of business of rolling sheet aluminum, it, the Cleveland Metal Products Co., would have a source of supply from the respondent for its own needs in the manufacture of cooking utensils and such other things requiring sheet aluminum as it made, which assurance was given to the Cleveland Metal Products Co. during the negotiations aforesaid. The Aluminum Rolling Mill Co. has an authorized capitalization of \$1,000,000, all common, \$600,000 of which is outstanding; \$400,000 of the outstanding capital stock was acquired by the respondent, the Aluminum Co. of America, at the formation of the Aluminum Rolling Mill Co., at which time the Cleveland Metal Products Co. acquired \$200,000 worth of said stock. Both the Cleveland Metal Products Co. and the Aluminum Co. of America still own the stock acquired by them at the organization of the Aluminum Rolling Mill Co. The Aluminum Rolling Mill Co. paid to the Cleveland Metal Products Co. \$34,890.70 over and above the original cost of the land and buildings purchased by it, no depreciation having been deducted from the original cost of the buildings and equipment. The board of directors of the Aluminum Rolling Mill Co. consists of seven members, four of whom have at all times represented the Aluminum Co. of America, and three of whom have represented the Cleveland Metal Products Co. The qualifying shares of stock for the four directors representing the Aluminum Co. of America, although standing in the names of those respective directors, have been assigned in blank to, have been paid for, and are and have been in the custody of the Aluminum Co. of America.

PAR. 7. Fred W. Ramsay, president of the Cleveland Metal Products Co., is president also of the Aluminum Rolling Mill Co., and although the Aluminum Rolling Mill Co. has produced more sheet aluminum than the Cleveland Metal Products Co. needs, the latter-named company, because of the control by the respondent of the Aluminum Rolling Mill Co., has not been able to secure from the Aluminum Rolling Mill Co. all of the sheet aluminum which it, the Cleveland Metal Products Co., has needed for the manufacture of aluminum cooking utensils and similar products.

PAR. 8. When the Cleveland Metal Products Co. commenced the operation of its aluminum rolling mill in 1915, its supply of ingots was obtained from stocks of foreign companies on hand in this country, and when that source of supply was exhausted, it was compelled to and did purchase ingot from the Aluminum Co. of America, because that was the only source of supply. All of the pig aluminum and aluminum ingot used by the Aluminum Rolling Mill Co. has been purchased from the Aluminum Co. of America.

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PAR. 9. After the sale by the Cleveland Metal Products Co. to the Aluminum Rolling Mill Co. of the rolling mill of the former it (the Cleveland Metal Products Co.) continued in and is still in the business of manufacturing and selling aluminum cooking utensils, enameled stove parts, enameled parts for oil stoves and heaters, but has since the sale of said rolling mill ceased purchasing aluminum ingot for the purpose of rolling the same into aluminum sheet, and since the sale of said rolling mill the Cleveland Metal Products Co. has ceased manufacturing and selling sheet aluminum.

PAR. 10. While the supply of sheet aluminum since 1917, and particularly since the signing of the armistice on November 11, 1918, has been inadequate for the demand there has been, particularly since the early part of 1919, no market in this country for the sale of ingot or pig aluminum to aluminum rolling mills because all of them with the exception of one, namely, the United States Smelting & Aluminum Co., an inconsiderable factor in the trade, are owned or controlled by the respondent, the Aluminum Co. of America.

PAR. 11. The rolling mill of the Cleveland Metal Products Co. sold to the Aluminum Rolling Mill Co., being located in Cleveland, Ohio, was close to large automobile manufacturing companies using large amounts of sheet aluminum, and it was an advantage to the Aluminum Co. of America to have a rolling mill in Cleveland, because it had none in that territory prior to the formation of the Aluminum Rolling Mill Co.

PAR. 12. The creation of the Aluminum Rolling Mill Co., by agreement between the respondent and the Cleveland Metal Products Co., and the acquisition by respondent of a controlling interest in the Aluminum Rolling Mill Co., and the transfer to the latter company by the Cleveland Metal Products Co. of its rolling mill and business in the products thereof, was a device for the accomplishment of the purpose of the respondent to obtain control of the said rolling mill and business in its products instead of the direct acquisition of stock in the Cleveland Metal Products Co., and was in effect equivalent thereto; the result of the use of this device, as completely as though the respondent had obtained a controlling stock interest in the Cleveland Metal Products Co., was to eliminate the actual, existing competition between the respondent and the Cleveland Metal Products Co. in the manufacture and sale in interstate commerce of sheet aluminum and aluminum cooking utensils, to prevent the Aluminum Rolling Mill Co. from becoming a competitor of the respondent in the manufacture and in the sale in interstate commerce of sheet aluminum, and tended to and did create in the respondent a monopoly in the manufacture and sale in interstate commerce of sheet aluminum.

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PAR. 13. The acquisition and continued ownership by respondent of the controlling interest in the stock of the Aluminum Rolling Mill Co. tended to and did bring about a complete monopoly in the respondent of the production and sale of sheet aluminum of certain much-used and important sizes manufactured in the United States, and tended to bring about a complete monopoly in the respondent of the sale, in interstate commerce, of all sizes of sheet aluminum manufactured in the United States.

## CONCLUSION.

The acquisition and the continued ownership by the respondent, the Aluminum Co. of America, of two-thirds of the outstanding capital stock of the Aluminum Rolling Mill Co., under the conditions and circumstances described in the foregoing findings constitute a violation of section 7 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."

## ORDER TO DIVEST STOCK.

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence and the argument of counsel, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated section 7 of the provisions 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,"

*It is now ordered,* That the respondent, Aluminum Co. of America, shall within one year from the day of the date hereof divest itself in good faith of all the stock in the Aluminum Rolling Mill Co. owned by it by selling and by absolutely disposing of the same; but such stock or any part thereof shall not be sold to:

(1) Any stockholder, or officer, director, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of the respondent.

(2) Any stockholder in, or officer or director or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of any of the subsidiaries of or any of the corporations associated with the respondent.

(3) Any stockholder in, or officer, director, or agent of, or anyone otherwise directly or indirectly connected with or under the control of any corporation in which the respondent, or in which any subsidiary or associate company of respondent owns stock.



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(4) Any corporation in which the respondent, or in which any of the subsidiary or associate companies of the respondent owns stock, or to any corporation which owns stock in any corporation owned or controlled directly or indirectly by or under the influence directly or indirectly of the respondent.

(5) Any corporation engaged in any branch of the aluminum industry in which any stockholder, officer, director or agent of, or anyone directly or indirectly under the control or influence of the respondent owns stock.

(6) Any corporation engaged in any branch of the aluminum industry in which any stockholder, officer, director, or agent of, or anyone directly or indirectly under the control or influence of any of the respondent's subsidiary or associate companies own stock:

*Provided*, That nothing herein contained shall prohibit the respondent from selling the said stock or any part thereof to the Cleveland Metal Products Co., its officers, directors, stockholders, or agents.

*It is further ordered*, That the respondent, Aluminum Co. of America, shall within 13 months after the day of the date of the service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been conformed to.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## UNITED STATES COLOR &amp; CHEMICAL CO., INC.

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

Docket 621—March 9, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of dyestuffs and chemicals, gave to employees of customers, without the knowledge and consent of their employers, cash gratuities as an inducement for them to influence their employers to purchase its products and to refrain from dealing with its competitors:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the United States Color & Chemical Co. (Inc.), hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

PAR. 2. That respondent is engaged in the business of manufacturing and selling dyestuffs and chemicals, causing such commodities to be transported from the State of Massachusetts through and into other States of the United States, in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business gives and has given to employees of its customers, cash gratuities or commissions to influence such employees to induce their employers to purchase respondent's products, and without other consideration therefor. That such cash gratuities aggregate in one year approximately \$10,000.

## Findings.

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PAR. 4. That by reason of the facts recited the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, the United States Color & Chemical Co. (Inc.), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent not having entered its appearance and not having filed its answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed, after which the respondent entered its appearance and filed its answer herein, and stipulated and agreed that a statement of facts signed and executed by counsel for the Commission and the respondent, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to the facts, its conclusion, and order, without the introduction of testimony, and thereupon this proceeding came on for final hearing, and the respondent having waived the filing of briefs and oral argument, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, United States Color & Chemical Co. (Inc.), is a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business at the city of Boston in said State, and is now and at all times hereinafter mentioned has been engaged in the business of manufacturing and selling dyestuffs and chemicals, causing such commodities to be transported from the State of Massachusetts through and into other States of the United States, in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, United States Color & Chemical Co. (Inc.), in the course of its business, as described in paragraph 1 hereof, for several years last past has given cash gratuities

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## Order.

to employees of its customers, without the knowledge or consent of their employers and without other consideration therefor, as an inducement to influence their employers to purchase respondent's products and to refrain from purchasing the products of its competitors.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondent, United States Color & Chemical Co., and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly giving to employees of its customers cash gratuities or gratuities of any kind whatsoever, as an inducement to influence their employers to purchase respondent's products and to refrain from purchasing the products of its competitors.

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

Complaint.

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## FEDERAL TRADE COMMISSION

v.

THOMAS DUGGAN AND W. C. DUGGAN, PARTNERS  
STYLING THEMSELVES THOMAS DUGGAN & SON.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 691—March 9, 1921.

## SYLLABUS.

Where a firm engaged in the sale of ship chandlery, gave to captains and other employees of vessels to which it furnished supplies, without the knowledge and consent of their employers, cash gratuities and commissions, expensive gifts, meals, theater tickets, automobile rides, and other forms of entertainment as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Thomas Duggan and W. C. Duggan, partners styling themselves Thomas Duggan & Son, hereinafter referred to as respondents, have been and are using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief, as follows:

PARAGRAPH 1. That respondents constitute a partnership and carry on business at Savannah, Ga., under the firm name and style of Thomas Duggan & Son, and are engaged in the business of selling ship chandlery supplies for ships engaged in coastwise and foreign commerce, and deliver said commodities to ships reaching the port of Savannah while engaged in transporting passengers and commodities between ports in various States of the United States and in transporting passengers and commodities between ports of the United States and foreign countries, such supplies so sold by respondents being for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States; said business is and has been conducted by respondents

in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondents in the course of their business as described in paragraph 1 hereof give and have given to captains and other officers and employees of vessels to which they furnish ship chandlery supplies, cash gratuities and commissions, expensive gifts, meals, theater tickets, automobile drives, and other forms of entertainment, amusement, or diversion to induce such officers and employees to purchase from respondent ship chandlery supplies for the ships operated by them for the owners thereof, and without other consideration therefor. That respondents expend for cash gratuities and commissions as aforesaid sums of money equaling approximately 5 per cent of the total volume of sales by respondents of such ship chandlery supplies, and have paid out for entertainment purposes as aforesaid sums of money equaling approximately 2½ per cent of the volume of business done.

PAR. 3. That by reason of the facts recited, the respondents are using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Thomas Duggan and W. C. Duggan, partners styling themselves Thomas Duggan & Son, charging them with the use of unfair methods of competition in violation of the provisions of said act.

The respondents having entered their appearance and filed their answer herein admitting all of the allegations of the complaint and each count and paragraph thereof, and having stipulated and agreed that a statement of facts signed and executed by counsel for the Commission and the respondents, subject to the approval of the Commission, are the facts in this case and shall be taken by the Federal Trade Commission as such and in lieu of testimony, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to the facts, its conclusion and order, without the introduction of testimony, and thereupon this proceeding came on for final hearing, and the respondents having waived the filing of briefs and oral argument, and the Commission having

Conclusion.

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

**FINDINGS AS TO THE FACTS.**

PARAGRAPH 1. That the respondents, Thomas Duggan and W. C. Duggan, are partners styling themselves Thomas Duggan & Son, having their principal place of business in the city of Savannah, State of Georgia, and are now and at all times hereinafter mentioned have been engaged in the selling of ship chandlery for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Georgia while engaged in transporting passengers and commodities between ports in the various States of the United States and between ports of the United States and foreign countries, in due course of commerce among the several States of the United States or with foreign nations, such supplies so sold being for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted by the respondents in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondents in the course of their business as described in paragraph 1 hereof, for several years last past have given to captains and other officers and employees of vessels to which they furnish ship chandlery supplies, without the knowledge or consent of their employers and without other consideration therefor, cash gratuities and commissions, expensive gifts, meals, theater tickets, automobile rides, and other forms of entertainment, amusement, or diversion, to induce such officers and employees to purchase from respondents ship chandlery supplies for the ships operated by them for the owners thereof. That respondents have expended for cash gratuities and commissions as aforesaid sums of money equalling approximately 5 percent of the total volume of sales by the respondents of such ship chandlery supplies, and have paid out for entertainment purposes approximately 2½ per cent of the volume of said business.

**CONCLUSION.**

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate and foreign commerce and constitute a violation of the act of Congress approved September 26, 1914, en-

titled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondents, Thomas Duggan and W. C. Duggan, partners styling themselves Thomas Duggan & Son, and their agents, servants, and employees, cease and desist from directly or indirectly giving to captains and other officers and employees of vessels cash gratuities and commissions, expensive gifts, meals, theater tickets, automobile rides, and other forms of entertainment, amusement, or diversion, as an inducement to such officers and employees to purchase for the owners of the vessels operated by them ship chandlery supplies from the respondents.

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



Complaint.

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## FEDERAL TRADE COMMISSION

v.

JOHN W. FOCKE.

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

Docket 627.—March 23, 1921.

## SYLLABUS.

Where an individual engaged in the sale of ship chandlery supplies, including steward's supplies, deck, engine, and cabin supplies, gave to captains and other officers of vessels to which he furnished supplies, without the knowledge and consent of their employers, valuable gifts, cash commissions, and gratuities as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that John W. Focke, hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is engaged in the business of selling ship chandlery including steward's supplies, deck, engine, and cabin supplies, for ships engaged in coastwise and foreign commerce, causing said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in various States of the United States bordering upon the eastern and southeastern coast thereof, and in transporting passengers and commodities from American ports to foreign countries in due course of commerce among the several States of the United States and with foreign countries; such supplies so sold by respondent being for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent in the course of its business as set out in paragraph 1 hereof, gives and has given to captains and other officers of vessels to which it furnishes ship chandlery, valuable gifts and cash commissions to purchase ship chandlery supplies from respondent.

PAR. 3. That by reason of the facts recited the respondent is using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, John W. Focke, charging him with using unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered his appearance and filed his answer herein, hearings were had, and evidence was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed, and the respondent having stipulated and agreed that the Commission shall forthwith proceed to make and enter its findings as to the facts, its conclusion and order without the introduction of testimony, the filing of briefs or oral argument on his behalf, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, John W. Focke, is engaged in the business of selling ship chandlery supplies, including steward's supplies, deck, engine, and cabin supplies, at the city of Galveston, State of Texas, for ships engaged in coastwise and foreign commerce, and causes said commodities to be delivered to ships reaching ports in the State of Texas, while engaged in transporting passengers and commodities between ports in various States of the United States bordering upon the eastern and southeastern coast thereof, and in transporting passengers and commodities between American ports and foreign countries in due course of commerce among the several States of the United States and with foreign nations; that such supplies so sold by the respondent are consumed

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and used by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, and said business is and has been conducted by respondent in direct active competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondent, in course of his business as described in paragraph 1 hereof, for several years last past has given to captains and other officers of vessels to which he furnishes ship chandlery supplies, without the knowledge and consent of their employers and without other consideration therefor, valuable gifts, cash commissions, and gratuities, amounting in value to approximately 5 per cent of their invoices, as inducements to purchase for the owners of the vessels operated by them ship chandlery supplies from the respondent.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, John W. Focke, and his agents, servants, and employees, cease and desist from directly or indirectly giving to captains or other officers or employees of vessels valuable gifts, cash commissions, or gratuities of any kind whatsoever as inducements to purchase for the owners of the vessels operated by them ship chandlery supplies from the respondent.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

McKENZIE OERTING, DOING BUSINESS UNDER THE  
NAME AND STYLE OF McKENZIE OERTING & CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 652—March 23, 1921.

## SYLLABUS.

Where an individual engaged in the sale of ship chandlery, gave to captains and other employees of vessels to which he furnished supplies, without the knowledge and consent of their employers, cash commissions and gratuities as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that McKenzie Oerting, doing business under the trade name and style of McKenzie Oerting & 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, McKenzie Oerting, carries on business at Pensacola, Fla., under the name and style of McKenzie Oerting & Co.

PAR. 2. That respondent is engaged in the business of selling ship chandlery for ships engaged in coastwise and foreign commerce, and delivers the commodities so sold to ships reaching ports in the State of Florida, while engaged in transporting passengers and commodities between ports in various States of the United States and in transporting passengers and commodities between ports of the United States and foreign countries, in due course of commerce between the several States of the United States and with foreign nations, such supplies so sold by respondent being for consumption and use by the

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purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States. Said business is and has been conducted by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That the respondent in the course of its business as set out in paragraph 2 hereof, gives and has given to captains and other officers and employees of vessels to which it furnishes ship chandlery, expensive gifts and large sums of money in the form of cash commissions, to induce such officers and employees to purchase their requirements of ship chandlery from respondent and without other consideration therefor.

PAR. 4. That by reason of the facts recited, the respondent has been using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, McKenzie Oerting, doing business under the name and style of McKenzie Oerting & Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of the said act.

The respondent having entered his appearance and having filed his answer herein, hearings were had and evidence was thereupon introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed, after which the respondent filed an amended answer in which he agrees and consents that the Federal Trade Commission shall forthwith proceed upon said amended answer and the evidence submitted herein to make and enter its findings as to the facts, its conclusion, and order disposing of this proceeding, without the introduction of further testimony, or the filing of briefs or oral argument in support thereof.

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

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, McKenzie Oerting, is engaged in the business of selling ship chandlery supplies, under the trade

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name and style of McKenzie Oerting & Co., at the city of Pensacola, State of Florida, to ships engaged in coastwise and foreign commerce, and causes said commodities to be delivered to ships reaching ports in the State of Florida while engaged in transporting passengers and commodities between ports in the various States of the United States, and in transporting passengers between ports of the United States and foreign countries, in due course of commerce, among the several States of the United States and with foreign nations; that such supplies so sold by the respondent are consumed and used by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, and said business is and has been conducted by the respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the course of his business as described in paragraph 1 hereof, for several years last past has given to captains and other officers and employees of vessels reaching the port of Pensacola to which he has furnished ship chandlery supplies, without the knowledge or consent of their employers and without other consideration therefor, cash commissions and gratuities, amounting in value from 3 to 5 per cent of their invoices, as inducements to purchase for the owners of the vessels operated by them ship chandlery supplies from the respondent.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, McKenzie Oerting, doing business under the name and style of McKenzie Oerting & Co., and

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his agents, servants, and employees, cease and desist from directly or indirectly giving to captains or other officers or employees of vessels cash commissions or gratuities of any kind whatsoever as inducements to purchase for the owners of the vessel operated by them ship chandlery supplies from the respondent.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

ST. LOUIS LIGHTNING ROD CO., MONARCH LIGHTNING  
ROD CO., AND FRANKLIN LIGHTNING ROD CO.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF  
AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 307—March 30, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of lightning rods, couplings, and fixtures under its patents, brands, trade-marks, and trade names of "Franklin," "Franklin lightning rods," and "C. B. F. R." (Cole Bros. Franklin Rods), and in its stationery and advertising used therewith a picture of Benjamin Franklin, and thereafter a competitor, whose acknowledged products were made and sold under its own well-known name, brand and trade-mark,

- (a) Secretly organized and operated two other companies with fictitious addresses for nonexistent offices and manufacturing plants as independent manufacturers and competitors, in whose names it solicited business and sold its own products to customers to whom it could not sell under its own name and brand;
- (b) Adopted for one of these bogus independent companies the name of "Franklin Lightning Rod Co.," using therewith on its stationery and advertising a picture of Benjamin Franklin, and sold under the name of "Franklin lightning rods" its products, similar to its competitor's, thus passing off its goods for its competitor's;
- (c) Published false and disparaging statements and criticisms of a competitor and its course of business, together with letters of said competitor procured from its customers;

All with the intent and effect of deceiving and confusing the public, embarrassing its competitor, and restraining his trade:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that St. Louis Lightning Rod Co., Monarch Lightning Rod Co., and Franklin Lightning Rod 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 ap-



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pearing 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, St. Louis Lightning Rod Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at the city of St. Louis, in said State, and is now and at all times hereinafter mentioned, has been engaged, directly and through its subsidiaries and owned and controlled concerns, in the manufacture and sale of lightning rods, fixtures, and ornaments generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, partnerships, and corporation similarly engaged; that the respondent, Monarch Lightning Rod Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business located at the city of St. Louis, in said State, and is now and at all times hereinafter mentioned has been engaged in the sale of lightning rods, fixtures, and ornaments generally in commerce throughout the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, partnerships, and corporations similarly engaged; that the respondent, Franklin Lightning Rod Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business in St. Louis, in said State, and is now and at all times hereinafter mentioned has been engaged in the sale of lightning rods, fixtures, and ornaments generally in commerce throughout the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, partnerships and corporations similarly engaged.

PAR. 2. That the respondent St. Louis Lightning Rod Co. was organized in 1902 by H. F. Kretzer, who afterwards, in October, 1916, organized and financed the respondent Monarch Lightning Rod Co. as a subsidiary of said St. Louis Lightning Rod Co., and afterwards, in August, 1917, organized and financed the respondent Frankling Lightning Rod Co. also as a subsidiary of the said St. Louis Lightning Rod Co.; that the stock ownership and control of the respondent St. Louis Lightning Rod Co. and its subsidiaries have always been vested in said H. F. Kretzer and members of his family up to the date of the death of the said H. F. Kretzer in January, 1919, and since his death in the surviving members of the

family; that the nominal incorporators and officers of said subsidiary corporations are former employees of said St. Louis Lightning Rod Co.; that the respondent St. Louis Lightning Rod Co. has concealed and still continues to conceal from the purchasing public its control of an interest in the respondents Monarch Lightning Rod Co. and Franklin Lightning Rod Co. and has permitted and still permits said respondents to be held out and advertised as wholly independent of said St. Louis Lightning Rod Co., and has authorized and permitted the products of said subsidiaries to be sold and offered for sale without any disclosure of the real stock ownership or control of said subsidiaries, thereby acquiring for such subsidiaries certain trade and business which could not have been acquired had the stock ownership and control of said subsidiaries been known to the public.

PAR. 3. That the selection of the corporate name for the respondent Monarch Lightning Rod Co. has had the effect of creating confusion in the trade, thereby enabling respondents to compete unfairly for the business of a competitor, which competitor had given to its products the trade name of "Monarch," and had adopted for its products the trade slogan of "Monarch of all rods"; that the selection of the corporate name for the respondent Franklin Lightning Rod Co. has had the effect of creating confusion in the trade, thereby enabling respondents to compete unfairly for the business of another competitor which had succeeded to the business and assets, including the good will, of the Cole Bros. Lightning Rod Co., which company had marketed its product under the trade name of "Franklin"; that the name of an employee of the St. Louis Lightning Rod Co., with the name of "Daniels," was used as an incorporator of said Franklin Lightning Rod Co., which had the effect of causing further confusion in the trade, due to the fact that in the organization of a leading competitor of respondents' there was a man well known to the trade by the name of "Daniels."

PAR. 4. That respondents for more than two years last past have been pursuing the policy of spying on the business of their competitors, thereby obtaining confidential information concerning the business of said competitors, and have been secretly paying employees of its competitors large sums of money for confidential information concerning the business of such competitors, including names of customers and destinations of shipments of products sold by said competitors and other information constituting business secrets, and have used the information thus obtained in acquiring the business of their competitors.

## Findings.

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PAR. 5. That respondents have pursued the policy of making disparaging statements concerning the responsibility and business of their competitors and have reported to the trade that one of its most active competitors had retired from the lightning-rod business and had gone into the moving-picture business.

PAR. 6. That respondents have misbranded certain products sold by them and have designated a rod sold by them with a joint or connection which it designated as a "rivet grip" connection, whereas there is no rivet used in making such connection or joint, but said connection or joint contains only an imitation of a head of a rivet.

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

The Federal Trade Commission, having issued and served upon the above-named respondents its complaint herein, wherein it is alleged that it had reason to believe that said respondents have been, and now are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of 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 said respondents having entered their appearances and filed their answers to said complaint, and the issues so raised having come on for hearing before an examiner of the Commission, and the Federal Trade Commission having duly appeared and introduced its evidence in support of the said charges, and the said respondents having duly appeared in person and by attorney and introduced their evidence in denial thereof, and all testimony heard at said hearing having been reduced to writing, and, together with the evidence received, having been duly filed in the office of the Commission, and the Commission and respondents having, through their respective attorneys, submitted briefs and made oral argument herein, and the Commission having duly considered the same and being fully advised in the premises, makes this its report in writing, stating its findings as to the facts and conclusions as follows:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent St. Louis Lightning Rod Co. is a corporation organized and existing under and by virtue of the laws of the State of Missouri, having its principal office and place of business located at the city of St. Louis in said State, and is now, and at all times hereinafter mentioned has been, engaged in the business

of manufacturing and selling and shipping lightning rods and lightning-rod couplings and fixtures from the city of St. Louis in the State of Missouri to purchasers thereof, located throughout various States of the United States, in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That respondent Monarch Lightning Rod Co. is a trade-name company, under which trade name the respondent St. Louis Lightning Rod Co. conducts a part of its business. That respondent St. Louis Lightning Rod Co., through respondent Monarch Lightning Rod Co. is now, and at all times hereinafter mentioned has been, engaged in the business of selling and shipping lightning rods and lightning-rod couplings and fixtures from the city of St. Louis, in the State of Missouri, to purchasers thereof located throughout various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 3. That respondent Franklin Lightning Rod Co. is a corporation organized and existing under and by virtue of the laws of the State of Missouri, having its principal office and place of business located in the city of St. Louis in said State, and is now, and at all times hereinafter mentioned has been, engaged in the business of selling and shipping lightning rods and lightning-rod couplings and fixtures from the city of St. Louis in the State of Missouri to purchasers thereof located throughout various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 4. That Henry F. Kretzer organized and caused to be incorporated respondent St. Louis Lightning Rod Co. in 1902, and became its president, and served as such until his death, in January, 1919; that Henry F. Kretzer during his lifetime owned and controlled respondent St. Louis Lightning Rod Co., and that since his death the personal representatives of Henry F. Kretzer have owned and controlled and do now own and control respondent St. Louis Lightning Rod Co.; that at the time of the organization of the respondent St. Louis Lightning Rod Co. it adopted, applied, and used the trade name "Kretzer Brand" for its lightning rods; that respondent St. Louis Lightning Rod Co., under its corporate name, has continuously since 1902 manufactured and sold "Kretzer Brand" lightning rods to the lightning-rod trade in interstate commerce, through the medium of traveling agents, correspondence, and advertising; that the trade name "Kretzer Brand" as adopted and applied to lightning rods manufactured and sold by respondent St. Louis Lightning Rod Co. under its corporate name has long since come to mean and designate

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to the lightning-rod trade lightning rods manufactured by respondent St. Louis Lightning Rod Co.

PAR. 5. That the respondent St. Louis Lightning Rod Co. through its traveling agents, for more than one year prior to the filing of the complaint herein, secured and procured from customers and prospective customers of a competitor letters written to said customers and prospective customers by its said competitor, and, with the purpose of embarrassing and restraining its said competitor in the manufacture and sale of lightning rods in interstate commerce, published and circulated among lightning-rod dealers located throughout various States of the United States certain printed publications wherein was printed and set forth copies of the aforesaid letters written by its said competitors to its customers and prospective customers, and wherein was printed and set forth false and disparaging statements, criticisms, and comments concerning its said competitor and the method and manner in which its said competitor conducted and transacted its said business, and that the tendency of such acts has been to hinder and dissuade customers and prospective customers from purchasing lightning rods from its said competitor.

PAR. 6. That respondent St. Louis Lightning Rod Co., in October, 1916, organized respondent Monarch Lightning Rod Co.; that respondent Monarch Lightning Rod Co. is owned and controlled by respondent St. Louis Lightning Rod Co.; that respondent St. Louis Lightning Rod Co., through the respondent Monarch Lightning Rod Co. and under the trade name Monarch Lightning Rod Co. has continuously since October, 1916, through the medium of advertising and correspondence, sold lightning rods in interstate commerce to the lightning-rod trade, said lightning rods being sold as and designated "Monarch lightning rods."

PAR. 7. That respondent St. Louis Lightning Rod Co. through respondent Monarch Lightning Rod Co. since the organization of said Monarch Lightning Rod Co., has represented, advertised, and held the said Monarch Lightning Rod Co. out to the lightning-rod trade and the general public to be an independent manufacturer of lightning rods and lightning-rod couplings and fixtures, with manufacturing plant and business office located at 822 Chestnut Street, St. Louis, Mo., whereas in truth and in fact respondent Monarch Lightning Rod Co. has not now and has never had any manufacturing plant and does not now and has never manufactured lightning rod or lightning-rod couplings and fixtures, and in truth and in fact respondent Monarch Lightning Rod Co.'s business office is not located at 822 Chestnut Street, in the city of St. Louis, in the State of

Missouri, but is located in the office of respondent, St. Louis Lightning Rod Co., located at 2135 DeKalb Street, in the city of St. Louis, in the State of Missouri.

PAR. 8. That respondent St. Louis Lightning Rod Co., at the time of the organization of respondent Monarch Lightning Rod Co., furnished and gave to respondent Monarch Lightning Rod Co. a list containing the names and address of lightning-rod dealers to whom respondent St. Louis Lightning Rod Co. had been unable to sell its "Kretzer Brand" lightning rods; that respondent St. Louis Lightning Rod Co., through the said Monarch Lightning Rod Co., has, through the medium of correspondence and advertising, solicited the sale of and sold Monarch lightning rods to lightning-rod dealers subsequent to and in instances where respondent St. Louis Lightning Rod Co. solicited the sale of and had been unable to sell its "Kretzer Brand" lightning rods.

PAR. 9. That Henry F. Kretzer organized and caused to be incorporated respondent Franklin Lightning Rod Co. in August, 1917, to engage in the business of selling lightning rods and lightning-rod couplings and fixtures, manufactured by respondent, St. Louis Lightning Rod Co.; that Henry F. Kretzer, during his lifetime owned and controlled respondent Franklin Lightning Rod Co. and that since his death his personal representatives have owned and controlled and do now own and control respondent Franklin Lightning Rod Co. That respondent Franklin Lightning Rod Co. under its corporate name has continually, since 1917, through the medium of advertising and correspondence, sold lightning rods in interstate commerce to the lightning-rod trade, said lightning rods being sold as and designated "Franklin lightning rods."

PAR. 10. That Cole Bros. Lightning Rod Co., a corporation organized under the laws of the State of Missouri, and located at the city of St. Louis, in said State, adopted, applied and used the name "Franklin" for lightning rods and lightning-rod couplings and fixtures and adopted and used a certain cut or picture of Benjamin Franklin upon its stationery and advertising matter; that the name "Franklin" as adopted and applied to lightning rods and lightning-rod couplings and fixtures had been used by Cole Bros. Lightning Rod Co. in the manufacture and sale of its lightning rods and lightning-rod couplings and fixtures for many years prior to the organization of respondent Franklin Lightning Rod Co.; that the name "Franklin," as adopted and applied to lightning rods and lightning-rod couplings and fixtures, had come to mean and designate to the lightning-rod trade lightning rods manufactured and sold by Cole Bros. Lightning Rod Co.

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PAR. 11. That Cole Bros. Lightning Rod Co., prior to the organization of respondent Franklin Lightning Rod Co., was the owner of United States registered trade-mark "Franklin" as applied to lightning rods and lightning-rod couplings and fixtures, same being the name it had for many years adopted, applied, and used to designate lightning rods and lightning-rod couplings and fixtures of its manufacture; said trade-mark being evidenced by registered certificate No. 104531.

PAR. 12. That Cole Bros. Lightning Rod Co., prior to the organization of respondent Franklin Lightning Rod Co., was the owner of United States registered trade-mark "C. B. F. R." as applied to lightning rods and lightning-rod couplings and fixtures, same being letters indicating Cole Brothers Franklin rods, which it had for many years adopted, applied and used to designate lightning rods and lightning-rod couplings and fixtures of its manufacture, said trade-mark being evidenced by registered certificate No. 104530.

PAR. 13. That Cole Bros. Lightning Rod Co., having decided to discontinue the further manufacture and sale of lightning rods and lightning-rod couplings and fixtures, on June 30, 1917, sold, assigned, and transferred to the Miller Lightning Rod Co., a corporation organized under the laws of the State of Missouri, having its business office and manufacturing plant located at the city of St. Louis, in the State of Missouri, its business, trade-marks, and patents; and that the said assignment of said trade-marks and patents was duly recorded in the United States Patent Office, October 27, 1917.

PAR. 14. That the Miller Lightning Rod Co., after purchase of the Cole Bros. Lightning Rod Co., notified the lightning-rod trade and advertised to said trade that it had purchased the business, trade-marks, and patents of Cole Bros. Lightning Rod Co. and would be prepared to manufacture and sell "Cole Bros. Franklin rods"; that the Miller Lightning Rod Co., after purchase of the Cole Bros. Lightning Rod Co.'s business, trade-marks, and patents, did manufacture and sell lightning rods and lightning-rod couplings and fixtures, branded, marked, and designated "Cole Bros. Franklin rods," and that the lightning rods and lightning-rod couplings and fixtures so branded and designated are the same in every respect as the lightning rods and lightning-rod couplings and fixtures formerly manufactured and sold by Cole Bros. Lightning Rod Co. and well-known to the trade as "Franklin lightning rods."

PAR. 15. That at the time of the organization of respondent, Franklin Lightning Rod Co., Henry F. Kretzer, selected and chose the corporate name "Franklin Lightning Rod Co."; that the lightning rods and lightning-rod couplings and fixtures manufactured by re-

spōndent St. Louis Lightning Rod Co. and sold to the lightning-rod trade by respondent Franklin Lightning Rod Co., under its corporate name, and designated and advertised as "Franklin Lightning rods," are similar in size, shape, and appearance to the lightning rods and lightning-rod couplings and fixtures formerly manufactured and sold by Cole Bros. Lightning Rod Co. and known to the trade as "Franklin Lightning rods," now manufactured and sold by the Miller Lightning Rod Co.; that respondent, Franklin Lightning Rod Co., in the conduct of its business since the time of its organization has used a certain cut or picture of Benjamin Franklin upon its stationery and advertising matter.

PAR. 16. That respondent St. Louis Lightning Rod Co. has represented, advertised, and held respondent Franklin Lightning Rod Co. out to the lightning-rod trade and the general public to be an independent manufacturer of lightning rods and lightning-rod couplings and fixtures, with manufacturing plant and business office located at 2134 South Second Street, St. Louis, Mo., whereas in truth and in fact respondent Franklin Lightning Rod Co. has not now and has never had any manufacturing plant and does not now and has never manufactured lightning rods or lightning-rod couplings and fixtures, and in truth and in fact respondent Franklin Lightning Rod Co.'s business office is not located at 2134 South Second Street, in the city of St. Louis, in the State of Missouri, but is located at the office of respondent St. Louis Lightning Rod Co., located at 2134 De Kalb Street, in the city of St. Louis, in the State of Missouri.

PAR. 17. That respondent St. Louis Lightning Rod Co., at the time of the organization of respondent Franklin Lightning Rod Co., furnished and gave to respondent Franklin Lightning Rod Co. a list containing the names and addresses of lightning-rod dealers to whom respondent St. Louis Lightning Rod Co. had been unable to sell its "Kretzer Brand" lightning rods; that respondent Franklin Lightning Rod Co. has, through the medium of correspondence and advertising, solicited the sale of and sold Franklin lightning rods to lightning-rod dealers subsequent to and in instances where respondent St. Louis Lightning Rod Co. solicited the sale of and has been unable to sell its "Kretzer Brand" lightning rods.

PAR. 18. That the effect of the acts, practices, and representations of respondents in the manner and form mentioned and set forth in the foregoing paragraphs are designed and calculated to embarrass competitors of said respondents in the conduct of their said business, and have the tendency and capacity to confuse and deceive the lightning-rod trade, and have resulted in confusion and uncertainty



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regarding the relation between respondents and a competitor of said respondents and have resulted in the lightning-rod trade being misled into believing that lightning rods sold by respondents were of the manufacture and sale of a competitor of said respondents.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent St. Louis Lightning Rod Co., and its agents, servants, and employees, and each and every one of them, do cease and desist from directly or indirectly:

1. Publishing or circulating advertising matter or other written or printed matter wherein is printed or set forth any false or disparaging statement, comment, or criticism concerning the business or business method of any competitor, or wherein is printed or set forth any false or disparaging statement, comment, or criticism concerning a letter or letters written by any competitor to a customer or prospective customer, with the purpose or effect of restraining or embarrassing any competitor in the conduct of its business or hindering or dissuading customers or prospective customers from purchasing lightning rods from any of its competitors.

2. Until such time as respondent Monarch Lightning Rod Co. may be actually engaged in the manufacture of lightning rods and lightning-rod couplings and fixtures, circulating in advertising matter, in letters, or otherwise, statements or representations to the effect that said Monarch Lightning Rod Co. is a manufacturer of lightning rods and lightning-rod couplings and fixtures, or in any other manner conveying the impression that said Monarch Lightning Rod Co.

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is engaged in the business of manufacturing lightning rods or lightning-rod couplings or lightning-rod fixtures, when it is not actually so engaged.

3. Circulating in advertising matter, in letters, or otherwise statements or representations which falsely state or represent the address or location of respondent Monarch Lightning Rod Co.'s office or place of business.

4. Selling lightning rods or lightning-rod couplings or fixtures through respondent Franklin Lightning Rod Co. without fully disclosing to the trade and the purchasing and consuming public that the St. Louis Lightning Rod Co. controls the distribution and sale of lightning rods and lightning-rod couplings and fixtures sold through, by, or under the name of respondent Franklin Lightning Rod Co.

5. Until such time as respondent Franklin Lightning Rod Co. may be actually engaged in the manufacture of lightning rods and lightning-rod couplings and fixtures, circulating in advertising matter, in letters, or otherwise, statements or representations to the effect that said Franklin Lightning Rod Co. is a manufacturer of lightning rods and lightning-rod couplings and fixtures, or in any other manner conveying the impression that said Franklin Lightning Rod Co. is engaged in the business of manufacturing lightning rods, or lightning-rod couplings, or lightning-rod fixtures when it is not actually so engaged.

6. Circulating in advertising matter, in letters, or otherwise statements or representations which falsely state or represent the address or location of respondent Franklin Lightning Rod Co.'s office or place of business.

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

Complaint.

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FEDERAL TRADE COMMISSION  
*v.*  
BIG FOUR GROCERY COMPANY.

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

Docket 547—March 30, 1921.

SYLLABUS.

Where a corporation engaged in the sale of groceries by mail, exclusively in combination orders so assembled that each assortment contained one or more items, the quality and retail prices of which were well known to the purchasing public, and other items, the greater part of the assortment, the quality and retail prices of which were not well known, in advertising said orders

- (a) Set forth prices of the different items, which for the staple articles were less than cost, but for the others were sufficiently high to afford a satisfactory profit on the assortment as a whole, thereby deceiving customers as to prices of all;
- (b) Falsely represented that the prices both of assortments and items composing the same, were less than those of its competitors for similar assortments and items; and
- (c) Advertised that it was selling sugar at 4½ cents a pound, flour at \$7.98 a barrel, Fels Naptha soap at 2 cents a bar, and Quaker Oats at 4 cents a package, the fact being that it sold none of the items in the assortments at the prices specified, but only in combination orders:

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

AMENDED COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Big Four Grocery 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 amended complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the Big Four Grocery Co. is a corporation organized, existing, and doing business under and by virtue of the

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laws of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State, now and at all times hereinafter mentioned engaged in the business of selling groceries and similar articles throughout the States and Territories of the United States and the District of Columbia from one central office by advertisements, catalogues, parcel post, express, and other means in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent, Big Four Grocery Co., transports and causes to be transported the merchandise so sold by it through various States of the United States in and to other States of the United States, where the same are delivered to the purchasers thereof, and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said merchandise between and among the various States of the United States and the District of Columbia, and more especially from other States and Territories of the United States and the District of Columbia to and through the city of Chicago, State of Illinois, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That said respondent in the course of its said business makes use of catalogues and other advertising matter which is given general circulation throughout the States and Territories of the United States and in the District of Columbia, which said catalogues and advertisements contain certain false and misleading statements concerning respondent's said business and alleged benefits which the public might derive from trading with respondent; that among such false and misleading statements are statements to the effect that respondent sells sugar at  $4\frac{1}{2}$  cents per pound and flour at \$7.98 per barrel; that in respondent's Trial Order No. 2 the estimated retail value of the several items is \$3.64 and that purchasers save approximately \$1.65 by purchasing said order at \$1.99 from respondent; whereas the prices obtained by respondent for the goods sold in combination lots or assortments as a whole are substantially the same or greater than the prices which retail grocers generally obtain for like assortments as a whole, and respondents do not possess any advantage in buying grocery products which enable them to sell such products at prices lower than those of other dealers.

PAR. 4. That the several combination lots or assortments so advertised by respondent are sold by it and for certain fixed prices for such combination lots or assortments as a whole; that said fixed

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prices are sufficient in amount to yield respondent a profit on the combination lot or assortment as a whole, respondent refusing to sell separately the items comprising any such given assortment; that the various items and quantities thereof comprising each said combination lot or assortment are listed and arranged in such advertisements so that appearing opposite to or in connection with such items are figures, ostensible prices, which have no relation to the actual prices at which respondent sells such items, either separately or in combination, but are of such arbitrary amounts and arrangement that when added appear to equal the total price, or the one and only price so advertised, which respondent expects to receive or does receive; that the arrangement and positions of said items with reference to said figures or ostensible prices are such that opposite to or in connection with staples the prices of which are well known to the public generally, such as flour and sugar, are placed figures, ostensible prices, far below the wholesale cost thereof or of any cost at which respondent could secure such staples at any time herein mentioned; and opposite to or in connection with items, the prices of which are not well known to the public, are placed figures, ostensible prices, of sufficient amounts to give respondent a satisfactory profit on each item of such combination lots or assortments and to cover the loss respondent would sustain if it actually sold said staples at the prices advertised; that the method of advertising thus employed by respondent has a capacity to deceive and does deceive purchasers and prospective purchasers into the belief that respondent is selling staples and other groceries at prices far below its competitors, when in truth and in fact the prices obtained by respondent for the goods sold in combination lots or assortments as a whole are substantially the same or greater than the prices which retail grocers generally obtain for like assortments as a whole.

PAR. 5. That the respondent, Big Four Grocery Co., for more than six months last past in commerce aforesaid has published and printed in the advertisements circulated, as aforesaid, price lists comparing the prices charged by it to the average retail price charged by its competitors; that the average retail price lists so advertised and published are false and misleading and are calculated and designed to and do mislead the trade and general public into the belief that such average retail prices are higher than they are in truth and in fact, thereby imputing respondent's competitors with the purpose of charging more than a fair price for their groceries.

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

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

The respondent having failed to answer said amended complaint within the time prescribed by law and the rules of practice of the Commission, or at all, due notice was served upon the respondent of the time and place of hearing, and thereupon hearings were had before an examiner of the Commission theretofore duly appointed, and testimony was introduced and evidence received in support of the allegations of the amended complaint, and the respondent, by its attorney, Charles B. Stafford, appeared and stated of record that it would neither submit testimony nor make a defense herein.

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

**FINDINGS AS TO THE FACTS.**

**PARAGRAPH 1.** That the respondent, the Big Four Grocery Co., at the time of the issuance of the amended complaint herein, was 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 located at the city of Chicago, in said State, and at the time of the issuance of the amended complaint herein and for more than one year therefrom has been engaged in the business of selling and shipping grocery products, in combination or assortment lots, from the city of Chicago, in the State of Illinois, to purchasers thereof located throughout the various 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 during all of the time herein mentioned the respondent in the course of its business as aforesaid has conducted and now conducts the same through the medium of advertisements, catalogues, and other printed and written matter, published and circulated through the various States and Territories of the United States and the District of Columbia.

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PAR. 3. That combinations or assortments of grocery products sold by the respondent as aforesaid contain many different items of groceries; that one or more of the items of groceries contained in each combination or assortment consist of staple articles the quality and retail prices of which are well known to the purchasing public; that the remaining articles in each combination or assortment, which constitute the greater part of said combination or assortment, consist of articles the quality and retail prices of which are not well known to the purchasing public.

PAR. 4. That in said advertisements and catalogues published and circulated by the respondent as aforesaid are printed and set forth the prices alleged to be charged by the respondent for each item comprising each combination or assortment of groceries; that the prices alleged to represent the sale prices of said staple articles are less than the prices at which the respondent purchases said articles; that the alleged sale prices of these articles of which the quality and prices are not known to the purchasing public, are sufficiently high to enable the respondent to make a satisfactory profit on the aggregate items comprising each combination or assortment; that said advertisements and catalogues have the tendency and capacity to, and do, mislead and deceive the purchasing public into the belief that the respondent sells each and every item of groceries contained in said combinations or assortments at a certain definite price and that those articles of which the quality and price are not well known to the purchasing public are sold by the respondent at prices as low, proportionately, as the prices which respondent represents as the selling price of said staple articles, whereas, in truth and in fact, the respondent does not sell any separate article comprising said combinations or assortments of groceries at a definite price, but sells only the said entire combinations or assortments at such a definite price as will allow respondent a satisfactory profit thereon, and will not sell separately any article mentioned in any of its combinations or assortments of groceries.

PAR. 5. That in said advertisements and catalogues, published and circulated as aforesaid, the respondent has, at all times herein mentioned, represented that the prices of its combinations or assortments of groceries, and the prices of individual items thereof are less than the prices at which such combinations or assortments, and such individual items are sold by its competitors; whereas, in truth and in fact, similar combinations or assortments of better quality and similar individual items of better quality could have been purchased at considerably less prices from competitors of the respondent.

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PAR. 6. That in said advertisements and catalogues, published and circulated as aforesaid, the respondent has at all times herein mentioned represented that it is selling sugar at  $4\frac{1}{2}$  cents a pound, flour at \$7.98 a barrel, and Fels Naptha soap at 2 cents a bar, and Quaker Oats at 4 cents a package; whereas, in truth and in fact, the respondent does not sell the aforesaid staples or any other product named as an item in said combinations or assortments at prices which respondent specifies in connection therewith.

## CONCLUSIONS.

That the methods set forth in the foregoing findings of facts, under 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."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the statement of the respondent by its attorney, Charles B. Stafford, Esq., that it would not make a defense herein, the testimony and evidence in support of the allegations of the complaint; and the Commission having made its findings as to the facts with its conclusions that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That the respondent, Big Four Grocery Co., its officers, agents, representatives, servants, and employees, do cease and desist, both directly and indirectly, in the course of interstate commerce, from:

1. Publishing or circulating, or causing to be published or circulated, catalogues or other advertising matter wherein there are offered for sale combinations or assortments consisting of well-known products, the prices and quality of which are well known to the purchasing public, and unknown products, the prices and quality of which are unknown to the purchasing public, when said well-known products are quoted at prices below cost and said unknown products quoted at sufficiently increased prices to offset the alleged reduced prices and sufficient to render a profit on such combinations or assortments.



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2. Publishing or circulating, or causing to be published or circulated, catalogues or other advertising matter wherein is set forth any false or misleading statement or representation concerning the prices at which groceries are offered for sale by respondent or concerning the prices at which its competitors sell groceries or concerning the business methods employed by its competitors.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## FEDERAL PRESS, INC., AND C. W. PARKER.

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

Docket 622—March 30, 1921.

## SYLLABUS.

Where a corporation having offices in many of the more important cities had long engaged in the biennial publication of the well-known reference book Who's Who (Who's Who in America), the general appearance of which was uniformly the same, and thereafter a competitor, with the intent and effect of misleading the public into confusing it with said corporation, and thereby securing desired data and subscriptions,

- (a) Adopted the same general appearance and price for its publications captioned "Who's Who in the Northwest," "Who's Who and Why," and (in preparation) "Who's Who and Why in the United States"; thereby deceiving many into purchasing its publications for those of said corporation;
- (b) Sent prospective customers circular letters containing such statements as "You will find attached a proof of your biographical matter prepared for insertion in the forthcoming edition of Who's Who and Why," and "Attached hereto is a clipping of your biographical matter" (taken from the latest edition of Who's Who), requesting any necessary additions or corrections and its return, together with a subscription to the forthcoming edition of Who's Who and Why, following the method used by the original Who's Who in soliciting such data and subscriptions, and thereby misleading many into complying in the belief that they were subscribing to the original Who's Who;
- (c) Used the method above set forth in soliciting subscriptions for Who's Who and Why in the United States, continuing, however, to designate the proposed publication as "Who's Who and Why"; and
- (d) Sent to prospective customers, following the method of Who's Who with persons not former subscribers, blank biographical questionnaires with a request for data for, and subscriptions to its publications, falsely stating that it was located in Washington at a specified address, and had offices in 57 cities named:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Federal Press (Inc.) and C. W. Parker, hereinafter referred to as respondents, are now,

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and for more than a year last past have 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 Federal Press (Inc.) is a corporation organized and existing under the laws of the State of Oregon, with principal place of business at Portland, in said State.

PAR. 2. That the respondent, C. W. Parker, is the president of the respondent Federal Press (Inc.) and owns all of its stock except single shares held by each of two business associates, which stock is held by such business associates merely to enable them to qualify as officers and directors. That the respondent, C. W. Parker, is in exclusive charge of the management and affairs of the respondent Federal Press (Inc.).

PAR. 3. That the respondents publish and sell books entitled "Who's Who in the Northwest," "Who's Who and Why," and other books under similar titles, containing personal sketches of living Americans and in some instances illustrated by a picture of the subject of the sketch. Respondents cause said books to be transported to the purchasers thereof from the State of Oregon through and into other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 4. That respondents' books are made of approximately the same size, color, binding, and general appearance of another publication containing personal sketches of living Americans whose position or achievements are considered by the publishers to be of general interest, entitled "Who's Who in America," published by A. N. Marquis & Co., of Chicago, Ill., which books were sold by respondents at the same price as that obtained for the Marquis publication, and, because of the similarity in size, binding, and general appearance of the books so sold by respondents to those sold by A. N. Marquis & Co., a great confusion has resulted, and purchasers have been induced to buy respondents' books upon the mistaken belief that they were the books of A. N. Marquis & Co., which through years of usage and circulation have become well known to the public.

PAR. 5. That respondents, as a means of inducing persons to buy their publications, have made use of circular letters accom-

panied by a sketch of the person addressed clipped from the publication entitled "Who's Who in America," described in paragraph 4 hereof, with the statement that such clipping was a proof of the biographical matter of the person addressed, prepared for insertion in a forthcoming edition of a book to be published by respondents, and the request was made by respondents that such additions or corrections as were deemed necessary be made and the proof returned to respondents. That respondents made use of the further statements in their circular letters and printed matter distributed throughout various States of the United States, soliciting purchases of their books, that they were located at 625 Riggs Building, Washington, D. C., and were operating in 57 different cities in various States of the United States and in Canada. That such statements were false and misleading and were calculated to and did deceive many of the persons addressed into purchasing respondents' books, believing that they were the books of the A. N. Marquis Co.

PAR. 6. That by reason of the facts recited the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it has reason to believe that the respondents, Federal Press (Inc.) and C. W. Parker, 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 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 C. W. Parker, duly authorized to act in the premises, and having filed their 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 respondents that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case and in lieu of testimony and

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shall proceed forthwith thereupon and issue its order disposing of this proceeding without the introduction of testimony or the presentation of argument in support of the same, and waiving any and all rights they may have to require the introduction of such testimony, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and conclusions.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent Federal Press (Inc.) is a corporation duly incorporated and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business in the city of Portland, in said State. That C. W. Parker is the president of the Federal Press (Inc.), and owns all of its stock except single shares held by two business associates in order to enable them to qualify as officers and directors. That respondent C. W. Parker is exclusively in charge of the management and affairs of the respondent Federal Press (Inc.).

PAR. 2. That the respondents publish and sell books entitled "Who's Who in the Northwest," "Who's Who and Why," "Who's Who and Why in the United States," and other books under similar titles containing personal sketches of living Americans, and in some instances illustrated by a picture of the subject of the sketch. That the respondents cause said books to be transported to the purchasers thereof from the State of Oregon through and into other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That respondent C. W. Parker began the publication of books similar to those described in paragraph 2 above in 1909 with the publication of an edition of "Who's Who In the Northwest." That neither respondent C. W. Parker nor any company in which he was interested published in the United States any other book or books similar to those described in paragraph 2 above until 1917, when respondent C. W. Parker, under the name of Western Press Association, got out another edition of "Who's Who in the Northwest."

PAR. 4. That respondent C. W. Parker in 1917 formed and incorporated the respondent Federal Press (Inc.). That in 1919 respondent C. W. Parker published, under the name of Federal Press (Inc.), a book similar to those described in paragraph 2 above and entitled "Who's Who and Why." That at the time the Commission commenced this investigation, about March 19, 1920, respondents had in process of preparation a book similar to those described in paragraph 2 above which was to be issued under the title, "Who's Who and Why in the United States."

PAR. 5. That A. N. Marquis & Co. of Chicago, Ill., has published biannually since 1899, at Chicago, Ill., a book containing personal sketches of living Americans under the title, "Who's Who in America," and has caused this book to be transported from the said State of Illinois through and into every other State of the United States, the Territories thereof, and the District of Columbia. That through many years of usage and circulation this publication has become well known to the public and is generally known throughout the United States as "Who's Who."

PAR. 6. That all editions of the above-referred-to publication of A. N. Marquis & Co. has been of approximately the same size, color, binding, and general appearance. That respondents' books are made of approximately the same size, color, binding, and general appearance as the publication above referred to of A. N. Marquis & Co. That respondents sold their books at the same price as that obtained for the Marquis publication. That because of this similarity in size, color, binding, general appearance, and price many persons bought respondents' books believing them to be the publication above referred to of A. N. Marquis & Co.

PAR. 7. That A. N. Marquis & Co. for many years has solicited data for and subscription to its publication, "Who's Who in America," by means of circular letters, accompanied by a sketch of the person addressed clipped from the latest previous edition of the publication Who's Who in America, requesting a revision and return of the sketch and a subscription to the forthcoming edition of the publication. That it also solicited data for its publication, particularly from those of whom sketches did not appear in previous editions of the work, by means of a blank biographical questionnaire.

PAR. 8. That respondents, as a means of securing data for and subscription to their books, sent from Portland, Oreg., to many persons throughout various States of the United States, the Territories thereof, and the District of Columbia, circular letters containing the statement, "You will find attached a proof of your biographical matter prepared for insertion in the forthcoming edition of Who's Who and Why," and requesting that such additions or corrections as were deemed necessary be made and the proof returned to respondents, to which letters were attached the biographical matter of the person addressed clipped from the latest previous edition of Who's Who in America, described above. The circular letters also requested the parties addressed to subscribe to Who's Who and Why. That many persons to whom such circular letters were sent revised the biographical matter attached, returned it to respondents, and subscribed

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to their publication believing it to be the book above described of A. N. Marquis & Co.

PAR. 9. That respondents, as a means of securing data for and subscriptions to their books, sent from Portland, Oreg., to many persons throughout the various States and Territories of the United States and the District of Columbia circular letters to which were attached the biographical matter of the person addressed clipped from the latest previous edition of Who's Who in America, above described, and which letters contained the statement, "Attached hereto is a clipping of your biographical matter. Will you kindly make such correction or additions as may be necessary or that you may desire, and return same to us by an early mail for insertion in Who's Who and Why." The circular letters also requested a subscription to the forthcoming edition of the publication from the party addressed. That many persons to whom such circular letters were sent revised the biographical matter attached, returned it to respondents, and subscribed to their publication believing it to be the book above described of A. N. Marquis & Co.

PAR. 10. That respondents used the methods described in paragraphs 8 and 9 above in soliciting data for and subscriptions to their publication to be known as "Who's Who and Why in the United States," continuing in the circular letters to designate the publication as "Who's Who and Why."

PAR. 11. That A. N. Marquis & Co., in connection with the publication and distribution of Who's Who in America, for many years has maintained offices or agencies in many of the more prominent cities of the United States, and this is generally known to those familiar with its publication.

PAR. 12. That the biographical questionnaires requesting data for and subscriptions to their publications sent by respondents from Portland, Oreg., to some persons in other States and Territories of the United States and the District of Columbia, contained the statements that respondents were located at 625 Riggs Building, Washington, D. C., and were operating in 57 different cities in various States of the United States and Canada. That in practically none of these cities did respondents ever have any offices or places of business. That those named merely represent cities from which respondents have secured subscribers. That respondents for about a year maintained an office for the receipt and forwarding of mail only, at 625 Riggs Building, Washington, D. C.

PAR. 13. That because of the representations described in paragraph 12 above some persons in various States of the United States

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furnished respondents biographical data, believing that respondents were the publishers of the book entitled "Who's Who in America."

PAR. 14. That the similarity in the names for respondents' publications to the name for the publication of A. N. Marquis & Co., when taken in connection with the above-described acts of respondents, is calculated to and has produced confusion in the minds of the public and deceived and misled many of it into subscribing to and purchasing respondents' publications, believing that they were the books of A. N. Marquis & Co.

PAR. 15. That the above-described acts of respondents were intended to and did mislead and deceive many persons into furnishing data for, subscribing to, and purchasing respondents' books, believing that they were the books of A. N. Marquis & Co.

#### 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 and the respondents, Federal Press (Inc.) and C. W. Parker, having entered their appearances by C. W. Parker, duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made and 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 the facts in this case and in lieu of testimony and proceed forthwith upon the same and enter 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 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,



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*It is ordered,* That the respondents, Federal Press (Inc.) and C. W. Parker, their officers, agents, representatives, servants, and employees cease and desist:

(1) Using upon any publication containing sketches of living Americans the words "Who's Who," unless it is clearly, definitely, distinctly, and unmistakably shown to the public that such publication is not that of A. N. Marquis & Co.

(2) Making their books containing sketches of living Americans of so nearly the same size, color, binding, general appearance, and price as to confuse and mislead the public into believing them the publication of A. N. Marquis & Co.

(3) Using biographical data from A. N. Marquis & Co.'s publications in soliciting data for and subscriptions to their publications unless it be clearly, definitely, distinctly, and unmistakably shown that such biographical matter is from the publications of A. N. Marquis & Co. and that the data requested and subscriptions asked are not for a publication of A. N. Marquis & Co.

(4) Representing themselves as operating in any city or cities of the United States and Canada in which they do not actually maintain offices or places of business.

*It is further ordered,* That the respondents, Federal Press (Inc.) and C. W. Parker, file a report in writing with the Commission 30 days from notice hereof, stating in detail the manner in which this order has been complied with and conformed to.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## RUNYAN COMPANY.

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

Docket 654—March 30, 1921.

## SYLLABUS.

Where a corporation engaged in the business of repairing and furnishing repair parts to ships, gave to captains and other employees of vessels, without the knowledge and consent of their employers, valuable gifts, cash commissions and gratuities as an inducement to have the ships operated by them repaired by it:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Runyan 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 is a corporation organized under the laws of the State of Florida, with principal place of business at Pensacola, in said State.

PAR. 2. That respondent is engaged in the business, among other things, of repairing and furnishing repair parts to ships which reach the port of Pensacola, while engaged in the transportation of passengers and cargoes between ports in various States of the United States, and the transportation of passengers and cargoes between ports of the United States and foreign nations, in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent, in the course of its business as described in paragraph 2 hereof, gives and has given to captains and other officers and employees of vessels reaching the port of Pensacola, valuable gifts and cash commissions and gratuities to induce such

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3 F. T. C.

captains, officers, and employees to have the ships operated by them for the owners thereof repaired and repair parts for same furnished by respondent, and without other consideration therefor.

PAR. 4. That by reason of the facts recited, the respondent has been using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

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

The respondent having entered its appearance and filed its answer herein and having stipulated and agreed that a statement of facts signed and executed by Adrian F. Busick, acting chief counsel for the Commission, and the respondent, subject to the approval of the Commission, are the facts in this proceeding and shall be taken by the Federal Trade Commission as such and in lieu of testimony, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed upon said agreed statement of facts to make and enter its findings as to the facts, its conclusion, and order, without the introduction of testimony, and thereupon this proceeding came on for final hearing, and the respondent having waived the filing of briefs and oral argument, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Runyan Co., is a corporation organized and existing under and by virtue of the laws of the State of Florida, having its principal place of business located at the city of Pensacola, in said State, and is now and at all times hereinafter mentioned has been engaged in the business of repairing and furnishing repair parts to ships which reach the port of Pensacola while engaged in the transportation of passengers and cargoes between ports in the various States of the United States and the transportation of passengers and cargoes between ports of the United States and foreign countries, in direct, active competition with other persons, partnerships, and corporations similarly engaged; that the

respondent carries or causes to be carried aboard such vessels so engaged materials and repair parts, and sends its employees aboard such vessels to install such parts and make such repairs thereon as may be required by the owners of such vessels.

PAR. 2. That the respondent, the Runyan Co., in the course of its business, as described in paragraph 1 above, for several years last past has given to captains and other officers and employees of vessels reaching the port of Pensacola, without the knowledge and consent of their employers and without other consideration therefor, valuable gifts, cash commissions, and gratuities as an inducement to have the ships operated by them for the owners thereof repaired and repair parts for same furnished by the respondent and to retain the good will of such officers and employees and to secure their approval of said work and to influence them to recommend to their employers that repair work on vessels owned by their employers when calling at the port of Pensacola be given to the respondent.

#### CONCLUSION.

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

#### ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondent, the Runyan Co., and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly giving to captains and other officers and employees of vessels, valuable gifts, cash commissions, or gratuities as an inducement to have the ships operated by them for the owners thereof repaired and repair parts for the same furnished by the respondent or to retain their good will or secure their approval of

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such repair work or to influence them to recommend to their employers that repair work on vessels owned by said employers, when calling at the port of Pensacola, be given to the respondent.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## MARINE SUPPLY COMPANY.

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

Docket 675.—March 30, 1921.

## SYLLABUS.

Where a corporation engaged in the sale of ship chandlery, gave to captains and other officers of vessels to which it furnished supplies, without the knowledge and consent of their employers, sums of money and presents as an inducement to purchase supplies:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Marine Supply 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 is a corporation organized under the laws of the State of Virginia, with principal place of business at Norfolk, in said State.

PAR. 2. That respondent is engaged in the business of selling ship chandlery supplies for ships engaged in transporting passengers and cargoes between ports in various States of the United States, and transporting passengers and cargoes between ports of the United States and foreign nations, and delivers such supplies when sold, to ships reaching the port of Norfolk, while engaged in coastwise and foreign commerce as herein described, such supplies being for consumption and use upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent in the course of its business as described in paragraph 2 hereof gives and has given to captains and other

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officers and employees of vessels to which it furnishes ship chandlery supplies, valuable gifts and cash commissions and gratuities to induce such officers and employees to purchase ship chandlery supplies from respondent and without other consideration therefor.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

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

The respondent having entered its appearance and filed its answer herein and having stipulated and agreed that a statement of facts, signed and executed by Adrian F. Busick, acting chief counsel for the Federal Trade Commission, and the respondent, subject to the approval of the Commission, shall be taken by the Commission in lieu of testimony, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed to make and enter its findings as to the facts, its conclusion, and order disposing of this proceeding without the introduction of testimony in support thereof; and thereupon this proceeding came on for final hearings, and the attorneys, having waived the filing of briefs and oral argument, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Marine Supply Co., is a corporation organized and existing under the laws of the State of Virginia, having its principal office and place of business at the city of Norfolk, in said State, and is now and at all times hereinafter mentioned has been engaged in the business of selling ship chandlery supplies for ships; that in the conduct of this business respondent purchases such supplies in the various States of the United States and transports same through other States to the city of Norfolk, State of Virginia, where the same are sold and delivered to ships engaged in transporting passengers and cargoes between ports

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in the various States of the United States, and in transporting passengers and cargoes between ports of the United States and foreign countries, and delivers such supplies when sold, to ships reaching the port of Norfolk, while engaged in coastwise and foreign commerce as herein described, such supplies so sold by respondent being for consumption and use by the purchasers thereof upon the high seas in and beyond the territorial jurisdiction of the United States, said business being conducted by respondent in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, the Marine Supply Co., in the course of its business as described in paragraph 1 hereof, during the year last past and since August 1, 1919, has given to captains and other officers of vessels to which it has sold and delivered ship chandlery supplies, without the knowledge and consent of their employers and without other consideration therefor, sums of money and presents, ranging in value from \$5 to \$20, to induce such captains and officers to purchase from the respondent ship chandlery supplies for the ships operated by them for the owners thereof.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, the Marine Supply Co., and its officers, directors, agents, servants, and employees cease and desist from directly or indirectly giving to captains and other officers of vessels, sums of money and valuable presents as an inducement to influence such captains and officers to purchase from the respondent ship chandlery supplies for the vessels operated by them for the owners thereof.



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

## Complaint.

FEDERAL TRADE COMMISSION  
*v.*  
ACCOUNTING MACHINE COMPANY, INC.

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

Docket 708—March 30, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of a calculating machine advertised that its product had been adopted by the Federal Government, the city of New York, and numerous nationally known industrial concerns, and that 85 per cent of the leading concerns of the country solved their accounting problems by its use, the fact being that its use was limited in practically all instances to the simpler accounting transactions and that for important work other machines were used:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Accounting Machine Co. (Inc.), hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

PAR. 2. That the respondent is engaged in the business of manufacturing and selling a small desk calculating machine which it has designated as the "Amco," and respondent causes machines sold by it to be transported to the purchasers thereof from the State of New York, through and into other States of the United States, in direct, active competition with other persons, partnerships, and corporations similarly engaged.

## Findings.

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PAR. 3. That respondent in the course of its business, as described in paragraph 2 hereof, makes use of post cards, window cards, letter-heads, folders, and other advertising matter which contain the statement that the machine sold by respondent and designated as the "Amco," has been "adopted by" the United States Government, the city of New York, and numerous nationally known industrial concerns named in such advertising matter; that such advertising matter contained a further statement to the effect that 85 per cent of the leading concerns of the United States solved their accounting problems by the use of the Amco machines; that such statements are false and misleading in that no one of the concerns named, or the Federal Government, or the city of New York had ever used the Amco machine throughout their respective organizations, to the exclusion of other computing machines, and that the use of such machines, by the concerns named, was limited in practically all instances to the simpler accounting transactions, and in carrying on the more important accounting work, each of said concerns used other makes of computing machines; that the use by respondent of such advertising matter was calculated to and did mislead and deceive the purchasing public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "an act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

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

The respondent having entered its appearance and filed its answer herein, and counsel for both parties to this proceeding, being desirous of expediting the disposition thereof, signed and executed an agreed statement of facts, subject to the approval of the Commission, which provided that the same should be taken by the Commission with the same force and effect as if testified to upon a hearing regularly had in this proceeding, and that the Commission might forthwith proceed upon such agreed statement of facts to make its report and findings as to the facts, its conclusions of law, and its order disposing of this proceeding; and thereupon this proceeding

came on for final hearing and the Commission, being now fully advised in the premises, makes this its findings as to the facts, and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Accounting Machine Co. (Inc.), is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business in New York City, in said State.

PAR. 2. That the respondent is engaged in the business of manufacturing and selling a small desk calculating machine, which it has designated as the "Amco," and respondent causes such machines sold by it to be transported from the city of New York to the purchasers thereof in other States of the United States in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent for two years last past in the course of its business described in paragraph 2 hereof, and to aid it in the sale and distribution in interstate commerce of said machines had made use of post cards, window cards, letterheads, folders, and other advertising matter which contain the statement that the machines sold by it and designated as the "Amco" have been adopted by the United States Government, the city of New York, and numerous nationally known industrial concerns named in such advertising matter.

PAR. 4. That such advertising matter contains a further statement to the effect that 85 per cent of the leading concerns of the United States solve their accounting problems by the use of Amco machines; that said statements referred to in paragraph 3 hereof and in this paragraph are false and misleading in that no one of the concerns named, nor the Federal Government, nor the city of New York, has ever used Amco machines throughout their respective organizations to the exclusion of other computing machines, and that the use of such machines by the concerns named, as well as by the United States Government and the city of New York, was limited in practically all instances to the simpler accounting transactions; that in carrying on the more important accounting work each of said concerns, as well as the United States Government and the city of New York, used other makes of computing machines; that neither the United States Government, the city of New York, nor any of the said nationally known business concerns named in said advertising matter have adopted such machines but have only used them at the same time they were using other computing machines.

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## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondent, Accounting Machine Co. (Inc.), its officers, agents, and employees, shall cease and desist from stating or claiming in its post cards, window cards, letterheads, folders, or any other advertising matter utilized by it in the course of the distribution and sale of its products in interstate commerce:

(1) That the computing machines manufactured and sold by it and designated as the "Amco" have been adopted by the United States Government, the city of New York, numerous nationally known industrial concerns or others, until and unless the same have been so adopted; it being the intention of this order to prohibit respondent from in any way deceiving or misleading its customers or the public into believing, when such is not the case, that its said machines have been or are utilized by the purchasers thereof to the exclusion of the machines of its competitors, or have been by such purchasers adopted in any way except by way of purchasing same; and

(2) That 25 per cent of the leading concerns of the United States or any portion thereof solve their accounting problems by the use of Amco machines until and unless such is and has become a fact; it being the intention of this order to prohibit respondent from deceiving and misleading the public into believing that all of the accounting problems are solved by said concerns by the use of Amco machines until and unless all of such problems are actually so solved:  
And

*It is further ordered,* That respondent shall within 60 days from date of this order file with the Commission a report or statement showing how and in what manner the above order has been and is being carried out.

Complaint.

## FEDERAL TRADE COMMISSION

v.

## SUNBEAM CHEMICAL COMPANY, INC.

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

Docket 462—April 18, 1921.

## SYLLABUS:

Where a corporation engaged in the manufacture and sale of dye soap, with intent to injure a competitor's business, falsely stated to customers and prospective customers of the competitor that in a suit against him for infringement of patent it had been granted an injunction restraining the sale of his products:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Sunbeam Chemical Co. (Inc.), 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 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, Sunbeam Chemical 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 Illinois, having its principal office and place of business in the city of Chicago, in said State, now and for more than two years last past engaged in the manufacture and sale of dye soap and in the shipment thereof from its place of manufacture to purchasers thereof in other States of the United States and the District of Columbia, in direct competition with numerous other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent for more than two years last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of dye soap in interstate commerce as aforesaid, has instituted suits for unfair competition against competing manufacturers of dye soap and has caused notice of its

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claims against its competitors for unfair competition and of the institution of such suits to be widely circulated among brokers, jobbers, and retailers throughout the United States, through whom such products are generally distributed, and among publishers of magazines and periodicals circulated throughout the United States which are ordinarily used for advertising such products, and has threatened the institution of similar suits against such brokers, jobbers, retailers, and publishers dealing in or advertising the products of competitors; that, notwithstanding that applications by the respondent to the courts for injunctions against the sale of the products of competitors were denied, the respondent has falsely represented to said brokers, jobbers, and retailers that it had obtained such injunctions, and that the effect of such claims, notices, threats, and representations has been to intimidate customers and prospective customers of competitors and to induce them to refuse to deal in the dye soaps of competitors and to cause said publishers of magazines and periodicals to refuse to accept advertising from said competitors and to cancel contracts already entered into for the publication of such advertising.

PAR. 3. That the respondent, in the conduct of its business in manufacturing and selling dye soap in interstate commerce as aforesaid, for more than two years last past, with the intent, purpose, and effect of eliminating competition in the manufacture and sale of dye soap, has purchased from dealers such stock of competitors' products as said dealers had on hand, and that the effect of such practice has been and is to remove the products of competitors from competition with those of the respondent and to obtain for respondent the exclusive trade of dealers handling dye soap.

PAR. 4. That the respondent, in the conduct of its business of manufacturing and selling dye soap in interstate commerce as aforesaid, for more than two years last past has caused to be circulated among jobbers, retailers, and the purchasing public generally throughout the United States statements and representations to the effect that the dye soaps of competitors are not suitable for the purposes for which they are sold, that they contain acids injurious to fabrics and the like, all of which statements and representations are false and mislead dealers and the purchasing public generally into giving an undue preference to the dye soap manufactured by the respondent and have the effect of causing great loss and damage to competitors.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a com-

plaint upon the respondent, the Sunbeam Chemical Co. (Inc.), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

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

And thereupon this proceeding comes on for final hearing, the Commission and respondent having, through their respective attorneys, filed briefs, and having waived oral argument, and the Commission, having duly considered the same and the record and being fully advised in the premises, makes this its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Sunbeam Chemical Co. (Inc.), 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 in the city of Chicago, in the State of Illinois, and that respondent for more than two years last past has been and now is engaged in the business of manufacturing and selling dye soap and in the shipment thereof to and between the various States of the United States in direct competition with other persons, firms, and corporations similarly engaged.

PAR. 2. That during the year 1919 the Magic Manufacturing Co. was 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 in the city of Chicago, in the State of Illinois, and was engaged in the business of manufacturing and selling dye soap, in direct competition with the respondent.

PAR. 3. That the respondent on February 15, 1919, filed a suit against the Magic Manufacturing Co. for unfair competition and infringement of trade-mark in the Circuit Court of Cook County, Ill.; that on March 29 of the same year the application for injunction as prayed for in respondent's bill of complaint in said suit was denied; that the respondent, on the 11th day of April, 1919, filed another suit against the Magic Manufacturing Co. for infringement of trade-mark in the District Court of the United States for the Northern District of Illinois, Eastern Division; that these two suits constitute the only litigation between the respondent and the Magic Manufacturing Co.

PAR. 4. That during the year 1919 the respondent's agents and brokers stated to customers and prospective customers of its competi-



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tor, the Magic Manufacturing Co., that the respondent had sued the Magic Manufacturing Co. for infringement of patent, and that the respondent had been granted an injunction restraining the sales of the products of the Magic Manufacturing Co.; that the Magic Manufacturing Co. was never sued by respondent for infringement of patent; that the respondent was never granted an injunction against the Magic Manufacturing Co.; that these statements were made for the purpose and intent of injuring the business of its competitor, the Magic Manufacturing Co.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondent, the Sunbeam Chemical Co. (Inc.), its officers, agents, brokers, representatives, servants, and employees, do cease and desist, directly or indirectly:

From stating to customers and prospective customers of competitors, for the purpose and intent of injuring the business of such competitors, that respondent has been granted an injunction restraining the sales of the products of the Magic Manufacturing Co. or others of its competitors when in fact no such injunction has been obtained.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## ALBANY CHEMICAL COMPANY.

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

Docket 700—April 19, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of drugs, including acetyl salicylic acid, popularly known as "aspirin," registered the word as a general trade-mark in a large number of States, accompanying its applications for registration with affidavits that it alone had the right to use the word, and thereafter—

- (a) Advertised generally that "Acco Aspirin," its product, was the only genuine aspirin;
- (b) Advertised that the word was its general trade-mark; and
- (c) Threatened numerous druggists and dealers with suits for infringement if they used the word on the products of any other concern;

Notwithstanding the fact that long prior to such attempted appropriation thereof, the word had been continuously, openly, and notoriously applied by numerous other manufacturers and dealers to the product acetyl salicylic acid and the exclusive right there to openly asserted and pressed by the successor to another company, the original patentee of the product and registrant of the word:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Albany Chemical Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

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

PAR. 2. That respondent is engaged in the business of manufacturing and selling drugs, chemicals, pharmaceutical supplies, etc., and

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causes said commodities to be transported to the purchasers thereof, from the State of New York through and into other States of the United States and to foreign countries, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That among the commodities sold by respondent is acetyl salicylic acid, for which letters patent of the United States No. 644,077 was issued on February 27, 1900, which was subsequently assigned to The Bayer Co. (Inc.), a New York corporation, and which patent expired on February 27, 1917; that for a number of years prior to February 27, 1917, acetyl salicylic acid, made by The Bayer Co. and the original owner of said patent No. 644,077, was designated by the respective manufacturers thereof and became known to the general public as "aspirin"; that the word "aspirin" was registered in the Patent Office of the United States on May 2, 1899, as a trade-mark, and the right thereto, if any existed, was acquired by The Bayer Co. (Inc.) by assignment on June 12, 1913; that on March 3, 1917, the Patent Office of the United States upon petition canceled the registration of such trade-mark, upon the ground, among others, that upon the expiration of said patent No. 644,077 the word "aspirin" became the descriptive name of acetyl salicylic acid and therefore not the exclusive trade-mark property of The Bayer Co. (Inc.).

PAR. 4. That in January, 1920, respondent made application to the secretary of state of numerous States of the United States for registration of the word "aspirin," and the claim was made by respondent for "the word 'aspirin' as a general trade-mark," and upon issuance to it by the secretary of state of the various States of certificates of registration as applied for, respondent thereupon started an extensive campaign of newspaper advertising, in which advertising it made numerous erroneous and deceptive statements of and concerning aspirin and respondent's right to the use of the word "aspirin" in connection with the manufacture and sale of acetyl salicylic acid products; that among such erroneous and deceptive statements were statements to the effect that "aspirin" is the registered trade-mark property of respondent; that respondent manufactured the genuine "aspirin"; that only by using respondent's "aspirin" could the public secure the medicinal value for which it paid and expected to get.

PAR. 5. That in addition to the advertising campaign carried on by respondent as described in paragraph 4 hereof, respondent wrote letters to numerous dealers in drugs and medicines in which the

claim was made that any use by them of the trade-mark "aspirin" alone or associated with any other word, except upon the product of respondent, will be regarded by respondent as in violation of and an infringement of its property rights in said trade-mark.

PAR. 6. That by reason of the facts recited the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

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

The respondent having entered its appearance by its attorneys, without filing an answer herein, and an agreed statement as to the facts having been made and filed, in which the taking of testimony in this proceeding is specifically waived and in which it is agreed that said statement as to the facts may be accepted by the Commission in lieu of testimony and that upon consideration thereof the Commission may make and enter such order as it may deem proper herein.

And thereupon this proceeding came on for final hearing without oral argument, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusions:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Albany Chemical Co., is and was at the times herein 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 in the city of Albany, in said State.

PAR. 2. That the respondent is and was at the times herein mentioned, engaged in the business of manufacturing and selling drugs, chemicals, and pharmaceutical supplies, and in the course of such business causes said commodities to be transported to purchasers thereof from the State of New York through and into other States of the United States, and to foreign countries, and that in the con-

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duct of its said business the respondent is in direct, active competition with other persons, copartnerships and corporations similarly engaged.

PAR. 3. That among the commodities manufactured and sold by the respondent in the course of its business is acetyl salicylic acid, more correctly described as the acetyl derivative of salicylic acid, which it manufactures and sells and causes to be transported in interstate commerce in the manner set forth in paragraph 2 hereof.

PAR. 4. That in the month of January, 1920, respondent made application to the secretary of state of numerous states of the United States for the registration of the word "aspirin" as a general trade-mark, and that pursuant to such application certificates of registration for said word "aspirin" as a general trade-mark were issued by the proper officers of each of the following States:

Colorado.	Minnesota.	Oregon.
Connecticut.	Missouri.	Pennsylvania.
Delaware.	Montana.	Rhode Island.
Florida.	Nebraska.	South Carolina.
Idaho.	Nevada.	South Dakota.
Illinois.	New Hampshire.	Tennessee.
Louisiana.	New Jersey.	Vermont.
Maine.	North Carolina.	Washington.
Maryland.	North Dakota.	West Virginia.
Massachusetts.	Ohio.	Wisconsin.
Michigan.	Oklahoma.	Wyoming.

PAR. 5. That in each application for the registration of said word "aspirin" as a general trade-mark, respondent claimed to have used it as a trade-mark, or stated it intended to use it as a trade-mark, on the following class of merchandise: "Chemicals, medicinal, pharmaceutical, veterinary, biological, and household preparations, compounds, waters, and the like that may be used internally and externally for humans and other purposes, and in one or more of the following forms or combinations thereof: Ampuls, crude materials, crystals, liquids, lozenges, mixtures, ointments, powders, solids, solutions, spirits, sirups, tablets (in round, square, or oblong shapes or otherwise), tinctures, prepared, if desired, in sanitary packing, in type and style for tablets, powders, and the like, and in other forms. (The foregoing class of products are mentioned by way of illustration.)" In such applications claim was made for "the word 'aspirin' as a general trade-mark" and also "claim is made for the word 'aspirin'" and "for the arbitrary word 'aspirin' as generally arranged as shown in the counterpart, but other forms of type may be employed or it may be differently arranged without materially altering the character of the said trade-mark."

## Findings.

PAR. 6. That each of said applications mentioned in paragraph 4 hereof was accompanied by an affidavit signed by the president of respondent, which affidavit contained a sworn statement to the effect that the respondent has a right to use the trade-mark "aspirin," and that no other person, firm, union, or corporation has a right to such use, either in the identical form described in such application, or in any such near resemblances thereto as may be calculated to deceive, and contained also further sworn statement to the effect that the word "aspirin" is the exclusive property of the respondent.

PAR. 7. That immediately upon registering the said word "aspirin" as a general trade-mark, respondent entered upon an advertising campaign and caused to be inserted and published in various newspapers and other publications which circulate generally throughout the United States, advertisements to the effect that "Acco aspirin" is the only genuine aspirin, and that "aspirin" is the general trade-mark property of respondent; and that annexed to said agreed statement of facts (marked "Exhibits 1" to "14," inclusive) and made a part thereof are true copies of some such advertisements to which reference is hereby made for the dates of said several publications and the contents of said advertisements.

PAR. 8. That the respondent during the month of April, 1920, and other times by the use of letters threatened numerous druggists and dealers in drugs and medicines with suits for infringement, if such druggists and dealers used the trade-mark "aspirin" on the products of any person other than those of respondent.

PAR. 9. That among the articles manufactured and sold by respondent under the trade-mark "aspirin" in interstate commerce, as set forth in paragraph 2 hereof, is a certain chemical known as acetyl salicylic acid, more properly described as the acetyl derivative of salicylic acid; that on May 2, 1899, the Farbenfabriken of Elberfeld Co., a corporation of Germany, caused to be registered in the United States Patent Office its trade-mark "aspirin," as applied to its preparation of acetyl salicylic acid, and thereafter, viz, on February 27, 1900, a United States patent was issued to said Farbenfabriken of Elberfeld Co. covering its formula for the preparation of said acetyl salicylic acid or the acetyl derivative of salicylic acid, and said Farbenfabriken of Elberfeld Co. continuously, from 1899 to the month of June, 1913, manufactured, sold, and caused to be shipped in interstate and foreign commerce the said chemical acetyl salicylic acid under the name of "aspirin," claiming said word as its trade-mark property.

PAR. 10. That in June, 1913, The Bayer Co. (Inc.), the capital stock of which was owned by subjects of the Emperor of Germany,

## Findings.

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claims to have acquired said trade-mark and said patent from the Farbenfabriken of Elberfeld Co., and since that date The Bayer Co. (Inc.) has caused to be manufactured, sold, and transported generally throughout the several States of the United States and the Territories thereof, and the District of Columbia, under said trade-mark "aspirin," at all times claiming said word as its trade-mark property, the said acetyl salicylic acid, or the acetyl derivative of salicylic acid; that after the declaration of war by the United States against Germany, the Alien Property Custodian, pursuant to said declaration of war and in conformity with the provisions of the act of Congress known as the trading with the enemy act, and the Executive orders issued pursuant thereto, seized the shares of capital stock and other property of said The Bayer Co. (Inc.), and on December 12, 1918, sold the same at public auction to Sterling Products Co., a corporation whose stockholders are citizens of the United States; and said The Bayer Co. (Inc.), under the ownership of Sterling Products Co., has continued since said last-mentioned date to manufacture, sell, and cause to be shipped throughout the several States of the United States and the Territories thereof, and the District of Columbia, said acetyl salicylic acid under the name "aspirin," claiming said word as its trade-mark property.

PAR. 11. That the patent referred to in paragraph 9 hereof expired on February 27, 1917, and in December, 1917, upon an application made for that purpose, the United States Patent Office canceled the registration of said word "aspirin" as a trade-mark, on the ground that the word has become by common use descriptive of said acetyl salicylic acid or the acetyl derivative of salicylic acid, and that upon the expiration of said patent the word became the property of all who make and use acetyl salicylic acid or the acetyl derivative of salicylic acid; and that thereupon, and prior to the time respondent caused the word "aspirin" to be registered as its trade-mark, as set forth in paragraph 4 hereof, many manufacturers of chemicals and drugs and like products commenced to manufacture, sell, and cause to be transported in interstate commerce, preparations of acetyl salicylic acid, labeling the same "aspirin," and have since continued to manufacture said acetyl salicylic acid and sell the same and cause the same to be transported throughout the several States of the United States and the Territories thereof, and the District of Columbia, and foreign countries in interstate commerce under said name "aspirin."

PAR. 12. That the use of said word "aspirin" as applied to acetyl salicylic acid by said Farbenfabriken of Elberfeld Co., and The Bayer Co. (Inc.), prior to February 27, 1917, and by The Bayer

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Co. (Inc.), and numerous other manufacturers and dealers in chemicals, drugs, and like products since said date, as applied to said chemical, has been continuous, open, and notorious, and The Bayer Co. (Inc.) has continuously and publicly claimed the exclusive right to use the said word "aspirin" as its trade-mark property and has at all times since June, 1913, used said word and advertised it generally throughout the United States as its trade-mark.

PAR. 13. That a suit is now pending in the United States District Court for the Southern District of New York, brought by The Bayer Co. (Inc.) against the United Drug Co., the object of which is to enjoin the United Drug Co. from using the word "aspirin" in connection with the manufacture and sale of acetyl salicylic acid.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is now ordered,* That the respondent, Albany Chemical Co., its officers, agents, and employees do cease and desist from:

(1) Advertising that it has or claims to have the exclusive right to the use of the word "aspirin," either by itself or in connection with any other word as its trade-mark property.

(2) Advertising or representing to the trade or to the public that said respondent is the manufacturer of the only "genuine aspirin."

(3) Advertising or claiming in any manner that the word "aspirin" either by itself or used in connection with other words is its registered trade-mark.



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(4) Threatening dealers or others with suits for infringement if such dealers or other persons use the word "aspirin" on the products of any person other than those of respondent.

*It is further ordered,* That within 30 days from date of the service of this order the said respondent report to the Commission how and in what manner it has complied with the terms of this order.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## VACUUM CLEANER SPECIALTY COMPANY, INC.

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

Docket 530—May 16, 1921.

## SYLLABUS.

Where a dealer in vacuum cleaners, handling most of the different makes on the market but with a special financial interest in one,

## I.

- (a) Failed to disclose such interest in a "PRICE LIST AND RATING SHEET" which it circulated among customers and prospective customers, and which gave such make the highest rating, contained a statement that its Rating Committee, for the members of which .. claimed long experience, "meets semimonthly, at which time all cleaners are tested scientifically for EFFICIENCY and comparisons are made on the points of SIMPLICITY AND CONSTRUCTION," and in other ways was calculated to create the impression that ratings given were the result of frequent, expert, and impartial examination, and could be relied on;
- (b) Tampered with and knowingly used for demonstration purposes improperly adjusted cleaners of a competitor;
- (c) Made false and injurious statements to prospective customers concerning the value, efficiency, and wearing qualities of such cleaners, and disparaged their makers;

## II.

Discontinued the use of the price list or rating sheet but thereafter

- (d) Published and circulated among customers and prospective customers a price list of its various cleaners, designating by stars certain machines as machines which it was "especially interested in," but without disclosing whether such interest was financial or otherwise:

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

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Vacuum Cleaner Specialty Co., Inc., Imperial Vacuum Cleaner Co., F. R. Muenzen, W. H. Kappeler, J. P. McGrath, A. J. Muenzen, J. M. Leddy, and J. G. Waschen, hereinafter referred to as respondents,<sup>1</sup> have been

<sup>1</sup> Complaint dismissed by order dated June 25, 1920, as to all respondents except the Vacuum Cleaner Specialty Co., Inc.

## Complaint.

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during the year last past 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 on information and belief as follows:

PARAGRAPH 1. That the respondent, Vacuum Cleaner Specialty Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city and State of New York, now and at all times hereinafter mentioned engaged in the business of selling vacuum cleaners throughout different States of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; and the respondents F. R. Muenzen, W. H. Kappelle, J. P. McGrath, and A. G. Muenzen are, respectively, president, vice president, treasurer, and secretary of said respondent corporation, having their residences and principal places of business in the city and State of New York.

PAR. 2. That in the conduct of its business, the respondent Vacuum Cleaner Specialty Co., Inc., from its principal place of business located in the city and State of New York, sells and transports vacuum cleaners of numerous manufacturers to customers located in various States of the United States; that after such vacuum cleaners are so sold they are continuously moved to, through, 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 and commerce in said vacuum cleaners between and among various States of the United States and the District of Columbia, to and through the city and State of New York, and from there to and through other States of the United States and the District of Columbia.

PAR. 3. That the respondent, Imperial Vacuum Cleaner Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city and State of New York, now and at all times hereinafter mentioned engaged in the business of selling a vacuum cleaner, for which it has adopted a trade name

## Complaint.

of "Imperial," by and through its duly constituted and appointed agent, the respondent Vacuum Cleaner Specialty Co., Inc.; and the respondents J. M. Leddy, F. R. Muenzen, and J. G. Waschen are, respectively, president, treasurer, and secretary of said corporation.

PAR. 4. That the respondent Vacuum Cleaner Specialty Co., Inc., by extensive advertising in publications circulated in commerce aforesaid, and by correspondence with numerous customers and prospective purchasers in various States of the United States holds itself out to the public as a vacuum cleaner specialist or expert and impartial adviser and as such impartial adviser solicits inquiries from such said prospective purchasers and the public concerning the methods of various types of cleaners and within the year last past invariably recommended the Imperial vacuum cleaner and frequently disparages competitive devices whereas in truth and in fact the respondent is not an impartial adviser but, on the contrary, has a special interest in the said Imperial cleaner by reason of the fact that the said Imperial cleaner is manufactured especially for the Vacuum Cleaner Specialty Co., Inc., and said company is the agent for the sale of the said Imperial cleaner, and the further fact that the amount of profit on the said Imperial cleaner is considerably greater than the profit made on the sale of the majority of other types of cleaners so advertised by the respondent.

PAR. 5. That the respondent, Vacuum Cleaner Specialty Co., Inc., by extensive advertising in publications circulated in commerce aforesaid and by correspondence with numerous customers and prospective customers in various States of the United States holds itself out as a vacuum cleaner specialist or expert and impartial adviser, and as such, within the year last past, has demonstrated to prospective customers vacuum sweepers and cleaners produced by various manufacturers for the purpose of comparing the results obtained by such sweepers and cleaners with the result obtained by cleaners in the sale of which the respondent is especially interested; and for the purpose of making such demonstrations has tampered with and failed to properly adjust such competitive cleaners while properly adjusting the cleaners in which it is interested, thus giving prospective customers the impression that such competitive cleaners are less efficient than they are in fact, or that they are not adapted for the use for which they are intended to be put by such prospective purchasers, thus facilitating the sale of the cleaners in which respondent is especially interested.

Findings.

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

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

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

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

**FINDINGS AS TO THE FACTS.**

**PARAGRAPH 1.** That the respondent, Vacuum Cleaner Specialty Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located in said city and State now and ever since the first day of August, 1918, engaged in the business of selling vacuum cleaners, sweepers and similar devices throughout different 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 in the conduct of its business, respondent from its principal place of business, located in the city and State of New York, sells and transports the vacuum cleaners, sweepers and similar devices of various types to customers located throughout the States of the United States and after such vacuum cleaners are so sold they are continuously moved to, through, 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 and commerce in said vacuum cleaners, sweepers and devices between and among various States of the United States and the District of Columbia, to and through the city and State of New York and therefrom to and through other States of the United States and the District of Columbia.

**PAR. 3.** That the respondent, Vacuum Cleaner Specialty Co., Inc., in the conduct of its business in commerce aforesaid, sells at

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Findings.

retail 24 different makes of vacuum cleaners or sweepers out of a total of 29 such devices on the market made by various competing manufacturers, including the Imperial Electric Vacuum Cleaner, which has been owned by or especially manufactured for the respondent and its predecessor, Muenzen Specialty Co., for more than three years last past and on the sale of which the respondent makes a considerably greater profit than it does on the sale of the other types of cleaners advertised and sold by it.

PAR. 4. That the respondent has sold and offered to sell such cleaners and sweepers in commerce aforesaid by means of advertisements placed in publications circulated throughout the United States and by correspondence with customers and prospective customers located in various States of the United States, and in pursuance of and as a part of such selling plan or policy during the year from August 1, 1918, to August 1, 1919, circulated among such customers and prospective customers a rating sheet wherein it designated and named certain cleaners as Three Star Cleaners as an indication of their superiority over the other devices listed in such rating sheet or Three Star list, and respondent did not indicate or set out in any manner whatsoever therein its ownership of or especial interest in said Imperial Electric Vacuum Cleaner; that said rating sheet or Three Star list was in the words and figures following, to wit:

"Three Star" Cleaners:	Per cent perfect.
1st choice, Imperial.....	94
2d choice, Victor.....	89
3d choice, Royal.....	89
4th choice, Regina.....	87
5th choice, Eureka.....	86
6th choice, Apex.....	85

PRICE LIST AND RATING SHEET.

All vacuum cleaners are good—some are better than others. Which is the best?

Customers invariably ask us WHICH IS THE BEST VACUUM CLEANER? In order to answer that question briefly we append hereto a list of the six best vacuum cleaners according to the judgment of our rating committee. The names are given in the order of their merit.

Our committee meets semimonthly, at which time all cleaners are tested scientifically for EFFICIENCY and comparisons are made on the points of SIMPLICITY AND CONSTRUCTION. Statistics as to DURABILITY are furnished by the superintendent of our repair department. Other points of lesser importance are also taken into consideration. Price is not considered at all.

Percentages are allotted to each cleaner for good points and penalties deducted for disadvantages. The net percentage is shown below opposite the name of each cleaner. The six cleaners with the highest percentage are what we call "Three Star" Cleaners.

## Findings.

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	Price.	Attach-ments.	Price com-plete with attach-ments.	
America.....	\$40.00	\$3.75	\$43.75	Wise-McClung Mfg. Co., New Philadelphia.
***Apex.....	45.00	10.00	55.00	Apex Elec. Mfg. Co., Cleveland, Ohio.
Baby Invincible.....	45.00	7.50	52.50	Invincible Vac. Cl. Mfg. Co., Dover, Ohio.
Bee Model "D".....	37.50	8.50	46.00	Birtman Elec. Co., Chicago, Ill.
Cadillac.....	37.50	8.50	46.00	Clements Mfg. Co., Chicago, Ill.
Cadillac Big Ben.....	50.00	8.50	58.50	Do.
Cadillac Little Ben.....	39.50	8.50	48.00	Do.
Cadillac Reliable.....	29.50	8.50	38.00	Do.
Duntley, S.....	42.00	7.50	49.50	Duntley Co., New York, N. Y.
Eclipse.....	37.50	9.00	46.50	Eclipse Mach. Co., Sidney, Ohio.
***Eureka (east of Rockies).....	37.50	8.50	46.00	Eureka Vac. Cl. Co., Detroit, Mich.
Frantz-Premier.....	39.75	10.00	49.75	Frantz-Premier Co., Cleveland, Ohio.
Hoover (Baby).....	47.50	8.50	56.00	Hoover Suction Sweeper Co., New Berlin, Ohio.
Hoover (special).....	57.50	11.50	69.00	Do.
Hot Point "L".....	33.00	10.00	43.00	Edison Elec. Appl. Co., Inc., Chicago, Ill.
Hot Point "M".....	38.00	10.00	48.00	Do.
***Imperial.....	45.00	10.00	55.00	Imperial Vac. Cl. Co., N. Y.
Liberty Model "C".....	40.00	8.00	48.00	Innovation Elec. Co., N. Y.
Maytag.....	35.00	8.00	43.00	Maytag Co., Newton, Ohio.
Ohio-4.....	45.00	10.00	55.00	United Elec. Co., Canton, Ohio.
Pittsburg.....	30.00	7.50	37.50	Pittsburgh Elec. Spec. Co., New York, N. Y.
Regina "MC".....	45.00	10.00	55.00	Regina Co., New York, N. Y.
***Regina Model "K".....	45.00	10.00	55.00	Do.
***Royal.....	45.00	10.00	55.00	P. A. Geier Co., Cleveland, Ohio.
Sweeper-Vac M. D.....	49.50	8.50	58.00	Pneuvac Co., Worcester, Mass.
Thor No. 5.....	30.00	8.00	38.00	Hurley Mach. Co., Chicago, Ill.
Thor No. 12.....	35.00	8.00	43.00	Do.
Torrington.....	44.75	9.75	54.50	National Sweeper Co., Torrington, Conn.
***Victor.....	37.50	10.00	47.50	Our own private brand.
Western Elec. No. 11.....	45.00	7.50	52.50	Western Elec. Co., New York.
Western Elec. No. 12.....	49.50	8.50	58.00	Do.

Because of our belief in their superiority we issue a special form of guarantee (see other side) on any cleaner sold while it is in the "Three Star" class.

There are nine members on our rating committee whose combined vacuum-cleaner experience totals 61 years. This in effect means that if our decisions are correct you would gain as much knowledge by reading over this rating sheet as you would by shopping 61 years for a vacuum cleaner.

For obvious reasons we would not care to give the percentages of the cleaners not on the "Three Star" list, but we would gladly give any other information in connection therewith.

To stimulate cash payments on all other than "Three Star" cleaners we allow 7 per cent cash discount. On "Three Star" cleaners the cash discount is 3 per cent.

VACUUM CLEANER SPECIALTY Co., INC.,

131 West 42d St., New York.

N. B.—Of course, after all, these ratings are simply our opinions and you must disregard them entirely if they do not agree with your personal opinion. No. 130.

The "3 Star" guarantee is furnished by us with all "3 Star" vacuum cleaners. Compare it with the guarantee below or any other vacuum cleaner guarantee. After reading it over you must realize that we have a lot of confidence in any make of cleaner on which we issue such a liberal guarantee. Notice that there are no exceptions or provisos in this guarantee.

It would be rather expensive for us to issue this guarantee on a vacuum cleaner that is liable to get out of order.

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## Findings.

## \* \* \*                      THREE STAR GUARANTEE.                      \* \* \*

We hereby guarantee \_\_\_\_\_ vacuum cleaner purchased by \_\_\_\_\_ for a period of one year from date. Said guarantee to include FREE repair of ANY damage to said cleaner resulting from ANY cause whatsoever. Moreover in the event of such repairs being needed we will call for and deliver cleaner or will pay expressage on it BOTH ways for out of town customers.

VACUUM CLEANER SPECIALTY Co., INC.

Per \_\_\_\_\_, *Secretary*.

Date \_\_\_\_\_.

The below guarantee is the ordinary guarantee which we furnish with vacuum cleaners that are not mentioned in the "3 Star List." It is substantially the same as manufacturers give, and it is quite different from the one above.

## GUARANTEE.

We hereby guarantee \_\_\_\_\_ vacuum cleaner purchased by \_\_\_\_\_ to be free from mechanical and electrical defects, and will repair or replace free of charge any part giving out within one year from date, provided directions for oiling and care of cleaner have been carried out. (Misuse, accident, and natural wear and tear excepted.)

All cleaners to be repaired must be sent to us express charges paid. We will not be responsible for the above cleaner if it has been tampered with.

VACUUM CLEANER SPECIALTY Co., INC.

Per \_\_\_\_\_, *Secretary*.

Date \_\_\_\_\_.

PAR. 5. That in August, 1919, the respondent discontinued the use of the aforementioned and above-described rating sheet or Three Star list, and thereafter published and circulated among its customers and prospective customers in commerce aforesaid a price list of various machines or devices handled by it wherein certain cleaners were designated by stars as ones in which the respondent was "especially interested in," but which did not disclose to the purchasing public the nature or character or extent of such "especial interest" or whether such interest was financial or caused by the relatively higher efficiency or merit of such designated machines; that such price list was in the words and figures following, to wit:



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## Price list.

Name of cleaner.	Price of cleaner without attachment.	Cash discount.	Time payments \$3.50 down and 8 monthly payments each.	Attachments additional.
America.....	\$50.00	\$2.50	\$5.81	\$10.00
Apex.....	57.75	5.25	6.78	11.50
Smaller set of attachments for Apex.....				10.00
Cadillac.....	45.00	2.25	5.19	10.00
Cadillac Big Ben.....	60.00	3.00	7.07	10.00
Cadillac Little Ben.....	47.40	2.37	5.50	10.00
Cadillac Reliable.....	39.50	1.97	4.50	10.00
*Eureka.....	45.00	2.25	5.19	8.50
Hot Point V-2.....	45.00	2.25	5.19	10.00
*Imperial.....	50.00	1.50	5.81	11.00
Smaller set of attachments for Imperial.....				6.75
Ohio-4.....	55.00	5.00	6.44	10.00
Premier "14".....	45.00	2.50	5.10	10.00
Premier "19".....	63.00	3.00	7.44	10.00
Regina Model "K".....	50.00	2.50	5.81	12.00
Royal.....	55.00	2.75	6.44	12.50
Smaller set of attachments for Royal.....				10.00
*Sweeper-Vac. M. D.....	63.00	5.50	7.44	10.50
Thor No. 12.....	42.50	2.12	5.00	9.50
Torrington.....	60.00	5.00	7.06	9.75
*Victor.....	47.50	2.13	5.50	10.00
Western Elec. No. 12.....	63.00	5.50	7.44	10.50

## VACUUM CLEANER SPECIALTY Co., INC.

Main offices and sales rooms, 131 West 42d Street, New York, N. Y.

Phone 6280 Bryant.

Phone 6281 Bryant.

140 West 34th Street, Bet. Broadway and 7th Ave. Phone 6283-6284 Bryant

107 West 42d Street. This store open evenings.

## FIVE CONVENIENT STORES.

Hudson Terminal Building, 30 Church Street, Booth 20, Phone 3851, Cortlandt

412 Fulton Street, Brooklyn, N. Y. Phone 1930 Main.

All express charges paid to any point. \* We are especially interested in these cleaners.

You are not obliged to purchase attachments with any make of cleaner; in fact, only about one-half of our customers buy attachments with the cleaner

538-10-8.

E. &amp; O. E.

No. 157.

These prices are subject to change without notice.

(Over)

[THIS IS A FACSIMILE OF OUR GUARANTEE BOND.]

## GUARANTEE BOND.

(Or insurance policy.)

We hereby guarantee ——— vacuum cleaner No. ———, purchased by ———  
 ———, for a period of one year from date. Said guarantee to include free  
 repair of any damage to said cleaner resulting from any cause whatsoever.

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## Conclusions.

Moreover, in the event of such repairs being needed we will call for and deliver the cleaner or will pay expressage on it both ways for out-of-town customers.

VACUUM CLEANER SPECIALTY Co., INC.,  
New York and Brooklyn.

Per \_\_\_\_\_, Secretary.

Date, \_\_\_\_\_

See other side for price list and terms.

PAR. 6. That the respondent in selling and offering to sell vacuum cleaners and sweepers in commerce as aforesaid has demonstrated the machines of different competing manufacturers to such customers for the purpose of comparing the results obtained by such cleaners and sweepers with the results obtained by the Imperial Electric Vacuum Cleaner in the sale of which the respondent was interested, and in so demonstrating the Hoover Suction Sweeper made by the Hoover Suction Sweeper Co. of North Canton, Ohio, has caused the sweeper to be operated improperly by—

(a) Revolving the brush in the wrong direction, the effect of which was to cause the sweeper to throw dirt out on the carpet.

(b) Permitting the handle hole cover to be partially off, which caused a passage of air to enter the machine at that point instead of through the nozzle, thereby reducing the suction of the machine.

(c) Arranging the lips of the nozzle so that they pressed down so closely to the floor that they did not allow a space for the air to pick the carpet up so that as the brush revolved it could create a vibration which would shake the dirt from the floor covering, and while so demonstrating has stated and held out to the purchasing public that the Hoover machine was not worth five cents; was made by a couple of harness makers; that if the Hoover machine was bought and lasted six months one would be lucky; that it was the worst machine on the market and its motor one of the most inferior on the market; that no one who manufactured cleaners cared for it and that it was absolutely no good and was never heard of outside of New Jersey, when in truth and in fact such Hoover machine compares favorably in efficiency, reliability, and effectiveness with other machines and is well known to manufacturers and the vacuum-cleaner public.

## CONCLUSIONS.

That the practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled

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"An act to create a Federal Trade Commission, to define its powers and duties and for other purposes."

## ORDER TO CEASE AND DESIST.

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

*It is now ordered* that the respondent, Vacuum Cleaner Specialty Co., Inc., its officers, agents, servants, and employees do cease and desist from directly or indirectly:

(1) Publishing or circulating among purchasers or prospective purchasers of vacuum cleaners or sweepers, or like devices, rating sheets, three-star lists, price lists, or any other similar advertising matter calculated or tending to induce the public to believe that the Vacuum Cleaner Specialty Co., Inc., does not own or have any special financial interest in any vacuum cleaner or sweeper, or like device, offered by it for sale to the public, when in fact it has some such interest in or ownership of such cleaners, sweepers, and like devices.

(2) Improperly demonstrating to purchasers and prospective purchasers sample vacuum cleaners or sweepers, or similar devices, which have been willfully tampered with or which have been intentionally improperly adjusted, or making such demonstrations in any manner whatsoever which do not fairly represent such cleaners, sweepers, or like devices to the purchasing public.

(3) Making false and misleading statements to customers or prospective customers concerning the efficiency, durability, reliability, quality, or effectiveness of competitive vacuum cleaners or sweeping devices.

*It is further ordered* that the respondent within 30 days after the date of service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinbefore set forth.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

UNIVERSAL MOTOR COMPANY AND UNIVERSAL  
PRODUCTS COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5  
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 582—May 27, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of electric lighting plants used its well-known trade name "Universal" in advertising, referring to, and selling its product, and thereafter two competitors adopted and applied said trade name to their respective products in advertising and selling the same:

*Held*, that such appropriation of trade name, under the circumstances set forth, constituted an unfair method of competition.

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Universal Motor Co. and Universal Products 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 respondent Universal Motor Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at the city of Oshkosh in said State, now and ever since December, 1914, engaged in the business of selling electric lighting plants for use on farms throughout various States of the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged, and the respondent Universal Products Co. is a corporation organized, ex-

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isting, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at the city of Sandusky, State of Ohio, at all times herein mentioned engaged in the business of selling and distributing the products of the respondent Universal Motor Co.

PAR. 2. That the respondent Universal Motor Co. in the conduct of its business purchases the materials and parts for use in its products in various States of the United States, causing the same to be shipped therefrom through other States in and to the city of Oshkosh, State of Wisconsin, where they are assembled and made into the finished product and then sold and shipped to customers in different States of the United States, and there is and has been at all times herein mentioned a constant current of trade and commerce in such lighting plants between and among the several States of the United States and more particularly in and to the city of Oshkosh, State of Wisconsin, and therefrom through and to other States and Territories of the United States.

PAR. 3. That the Universal Battery 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 ever since the year 1913 engaged in selling and distributing electric storage batteries and electric lighting plants for use on farms in competition with the respondents herein. That during the year 1913 the aforesaid Universal Battery Co. took over and acquired all the right, title, and interest in and to the business, good will, and trade names of Universal Electric Storage Battery Co., which had been engaged since the year 1911 in selling and distributing electric storage batteries and electric lighting plants for farm use.

PAR. 4. That ever since the year 1911 said Universal Battery Co. and its predecessor, Universal Electric Storage Battery Co., have used, adopted, and applied to their batteries and lighting plants the trade name "Universal," and by advertisements in circulars and newspapers generally distributed throughout various States of the United States their products have become well known and established with the trade and general public as Universal batteries and Universal lighting plants.

PAR. 5. That the respondents, Universal Motor Co. and Universal Products Co., ever since December, 1914, in commerce aforesaid, have advertised and sold and are now offering for sale to the trade and general public lighting plants for which they have adopted and assumed the trade names of Universal lighting unit, Universal unit lighting plants, and Universal farm lighting unit, and that the

effect of such simulation has been, and is, among others, to confuse the trade and general public and mislead dealers, customers, and prospective customers into the belief that the lighting plants of the respondents and Universal battery company are one and the same.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, Universal Motor Co. and Universal Products Co., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents, having entered their appearances and filed their answers herein through their respective attorneys, and the said attorneys and the attorney for the Commission having introduced evidence herein as provided by said act, and respondent having entered into stipulations as to the facts and requested the Commission to issue its order in conformity therewith, and respondent having waived oral argument and the filing of briefs with the Commission, and the Commission being now fully advised in the premises, finds and concludes as follows:

#### FINDINGS AS TO THE FACTS.

**PARAGRAPH 1.** That the Universal Battery Co., a corporation organized, existing and doing business since the year 1913, under the laws of the State of Illinois, with its principal place of business in Chicago, in said State, succeeded to the business conducted by the Universal Electric Storage Battery Co., a corporation that had been organized in 1911, and which in turn had succeeded to the business conducted by a firm in Chicago since 1901; that said Universal Battery Co. has been since said year 1913, and now is, engaged in manufacturing, selling, and distributing in interstate commerce, electric storage batteries and electric lighting plants; that in its advertising, correspondence, and contracts of sale, it had given and is giving to such battery and electric lighting plants the name "Universal," which had been used by its said predecessors since 1901; that the public recognized during said period and now recognizes the product of said company by the said name "Universal" used in connection therewith.

**PAR. 2.** That the respondent, Universal Motor Co., a corporation organized in 1914, under the laws of the State of Wisconsin, with its principal place of business at Oshkosh, in said State, has been since said year, and now is, engaged in selling and distributing in inter-

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state commerce, lighting plants for farm purposes in direct competition with said Universal Battery Co.; that in its advertising and sales of its product the name "Universal" has likewise been given thereto, though said respondent began business subsequent to the time said Universal Battery Co. started to engage in business.

PAR. 3. That the respondent, Universal Products Co., a corporation organized in 1918 under the laws of the State of Wisconsin, with its principal office at the city of Sandusky, in the State of Ohio, has been since said year engaged in advertising and selling in interstate commerce electric-lighting plants in direct competition with said Universal Battery Co., and in so doing has used the word "Universal" in connection with its said products; notwithstanding the fact that it began business subsequent to the time the said Universal Battery Co. started to engage in business.

PAR. 4. That the said Universal Battery Co. and the said respondents, Universal Motor Co. and Universal Products Co., respectively, have been, and now are, in the conduct of their business as heretofore described, selling and transporting their said respective products from their respective places of business to the purchasers thereof in other States of the United States and in the Territories of the United States and in foreign countries, and there has existed during all the said period, and now exists, a constant current of commerce in their said respective products between the said States, Territories, and foreign countries.

PAR. 5. That said Universal Battery Co. and said respondent, Universal Motor Co., entered into a stipulation herein, wherein they requested the Federal Trade Commission to issue its order herein whereby said respondent "shall have the right to refer to their product in their advertising literature, as 'Universal electric generating sets,' or 'Universal Motor Co.'s farm-lighting plants,' or the like, so long as they do not use the wording 'Universal lighting plant' or 'Universal lighting system' specifically as adopted by said Universal Battery Co., the object being to so word the advertising of the Universal Motor Co. as to differentiate from the advertising of the Universal Battery Co. and thus avoid all possible conflict that might suggest unfair competition."

PAR. 6. That said Universal Battery Co. and said respondent, Universal Products Co., entered into a stipulation herein wherein they requested the Federal Trade Commission to issue its order herein to provide that said respondent "shall hereafter not use the word 'Universal' in its advertising of lighting plants or systems without immediately following such word in all cases with the word 'Products,'" and that "Universal Products Co. will advertise light-

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Order.

ing plants or systems only under the name of 'Universal Products lighting plants' or 'systems,' or equivalent language, including the words 'Universal' and 'Products,' the one following immediately after the other; and that the Universal Products Co. shall immediately change all advertising plates and matter in so far as it is possible"; and that said respondent will not "permit the use upon its behalf of any plate or advertising matter which does not conform with this stipulation."

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

This cause having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, the stipulation of facts executed and filed herein by counsel for the respective parties, the testimony and other evidence introduced by counsel herein, and the Commission having made its findings as to the facts, with its conclusion that the respondents have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is ordered* that the respondent, Universal Motor Co., cease and desist in the course of its business in interstate commerce from using the word "Universal" in its advertising, on its letterheads, billheads, and other stationery, to describe or designate its lighting plants or lighting systems, unless the word "Universal" be followed with or accompanied by the words "Motor Co.," or by other words clearly showing that the lighting plants or lighting systems are those of the Universal Motor Co.

*It is further ordered* that the respondent, Universal Products Co., cease and desist in the course of its business in interstate commerce from using the word "Universal" in its advertising, on its letterheads, billheads, and other stationery, to describe or designate its lighting plants or lighting systems unless the word "Universal" be followed with or accompanied by the words "Products Co.," or by other words clearly showing that the lighting plants or lighting systems are those of the Universal Products Co.



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*It is further ordered* that respondents and each of them shall, within 60 days from the date of this order, file with the Commission a report or statement showing how and in what manner they have been and are complying with this order.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

THE STAR PROVISION COMPANY, MALONE OIL COMPANY  
and B. MARX, TRADING UNDER THE NAME AND STYLE  
OF LIBERTY OIL PRODUCTS COMPANY.COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION  
5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 611—June 4, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of lubricating oils, adulterated linseed oil, and like products, at the request of purchasing dealers labeled a mixture of boiled (or Raw) linseed oil, mineral oil, and a drier with the name of the dealer, together with the words "Guaranteed for Mechanical Purposes. Inedible Compound Boiled (or Raw) Linseed Oil \* \* \*," without stating the other ingredients; and

Where a corporation and an individual dealing in oils, roofing cements, concrete hardeners, paints, and like products,

(a) Sold a mixture of boiled (or raw) linseed oil, mineral oil, and a drier, labeled, at their request, as above described;

(b) Advertised and offered through circular letters various products compounded with mineral oil under such characterizations as "Extra W. S. Lard Oil," "Brown Strained Fish Oil," "Straits Fish Oil," "Sperm Oil," etc., with such statements as "You are undoubtedly aware that there is an enormous shortage of Animal Oils \* \* \* and while we do not guarantee our products to be 100% pure, we feel confident that the same will meet your requirements for all mechanical and industrial uses \* \* \*," and "Our oils are guaranteed for all mechanical and industrial purposes, \* \* \*"; and

(c) Advertised and offered through circular letters certain products compounded with mineral oil which it characterized as "Comp. Raw Linseed Oil," "Comp. Boiled Linseed Oil," and "Comp. Turpentine," together with the statements "You are undoubtedly aware that the market price on Linseed oil and turpentine has advanced to practically the highest price ever known. For this reason we are producing a special grade of oil, and while we do not guarantee the same to be absolutely pure, we will, however, guarantee it for all painting purposes";

With a tendency and capacity, in such circular letters, to deceive and mislead customers into believing that part of the products so offered were pure oils of the kind specified, and that the rest were special grades of special compound oils, entirely proper for all industrial purposes, and not mixtures of the oils specified with mineral oil:

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

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Star Provision Com-

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pany, Malone Oil Company, and B. Marx, trading under the name and style of Liberty Oil Products Company, 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:

PAR. 1. That the respondent Star Provision Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business at Cleveland, in said State. That the respondent Malone Oil Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business at Cleveland in said State. That the respondent B. Marx is treasurer and manager of the respondent Star Provision Company and conducts a branch of the business of said respondent under the trade name of Liberty Oil Products Company.

PAR. 2. That the respondent Star Provision Company is engaged in the business of dealing in oils and paints, cements, concrete hardeners, and like commodities, part of which business is conducted in its own corporate name and part under the trade name of Liberty Oil Products Company. That the respondent Malone Oil Company is engaged in the business of manufacturing and selling lubricating oils, adulterated linseed oil, and like products. That each of said respondents sells their respective products and commodities in various States of the United States and causes same to be transported to the purchasers thereof from the State of Ohio through and into various other States.

PAR. 3. That when the respondent Star Provision Company obtains from a customer an order for lubricating oil or adulterated linseed oil, such order is turned over to the respondent Malone Oil Company, which makes up the commodity so ordered and which is put in containers and labeled as the product of the respondent Star Provision Company or the Liberty Oil Products Company.

PAR. 4. That the respondent Star Provision Company, both in its own corporate name and under the trade name of Liberty Oil Products Company, by circulars and circular letters mailed to prospective customers, solicits trade in various lubricating oil compounds and adulterated linseed oils without disclosing to the purchasing public the component ingredients of said compounds, and such circulars are calculated to and do deceive the purchasing public

## Findings.

and create the erroneous impression that such oils and compounds are pure lard, fish, sperm, or linseed oils. That said circulars and circular letters also contain the false and misleading statement that such oils and compounds so offered to the purchasing public will meet the requirements of all mechanical and industrial uses.

PAR. 5. That the actions and doings of the said respondents, severally and in their common action, herein referred to and recited, is an unfair method of competition in interstate commerce within the meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served its complaint upon the respondents, the Star Provision Company, Malone Oil Company, and B. Marx, trading under the name and style of Liberty Oil Products Company, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondents having entered their appearance by their attorney, James Metzenbaum, Esq., and filed their answer herein, an agreed statement of facts was duly executed under date of November 1, 1920, by said counsel for respondents and by the chief counsel for the Federal Trade Commission, and duly filed in the records of this cause, said agreed statement of facts, subject to the approval and acceptance of the Commission, to be in lieu of testimony, and to be the evidence in this cause. By such agreed statement of facts respondents agreed to waive the privilege of filing written brief herein, and agreed that the Commission should proceed forthwith to enter its report, stating its findings as to the facts, and its conclusion, and to make and enter its order, disposing of this cause; but reserving to the respondents, nevertheless, the right to file a motion to dismiss the complaint, and to offer oral argument in support thereof. Such right and privilege of filing such motion to dismiss the complaint, and to offer oral argument in support thereof, was subsequently, under date of November 5, 1920, withdrawn and waived by respondents, as will more fully appear from the files and records of this cause.

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

Findings.

S F. T. C.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent Star Provision Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business in the city of Cleveland, in said State. That the respondent Malone Oil Company is a corporation organized and existing under the laws of the State of Ohio, with principal place of business in the city of Cleveland, in said State. That the respondent B. Marx is treasurer and manager of the respondent Star Provision Company, and conducts a branch of the business of said respondent under the trade name of Liberty Oil Products Company.

PAR. 2. The respondent Star Provision Company is engaged in the business of buying and selling oils, paints, cements, concrete hardeners, and like commodities, part of which business is conducted under its own corporate name and part under the trade name of Liberty Oil Products Company. The respondent B. Marx, for the Star Provision Company aforesaid, and also under the trade name of Liberty Oil Products Company, as aforesaid, is engaged in the business of selling oils, roofing cements, concrete hardeners, paints, and like products. Each and all of said respondents sell their respective products and commodities in various States of the United States, and cause the same to be transported to the purchasers thereof, from the State of Ohio, through and into various other States of the United States. Said respondents have sold and transported their respective products and commodities, as aforesaid, during the year last past and prior thereto, in direct competition with other individuals, firms, and corporations engaged in the same or similar business, and likewise selling and transporting their products in and through the several States of the United States.

PAR. 3. The said respondents the Star Provision Company and B. Marx, under the said trade name of Liberty Oil Products Company, have been and are selling to purchasers in various States of the United States a product which is labeled as follows:

Liberty Oil Products Co. Guaranteed for Mechanical Purposes. Inedible Compound Boiled (or Raw) Linseed Oil. Cleveland, Ohio.

Said product, so sold and labeled, as aforesaid, was not pure boiled linseed oil or pure raw linseed oil; but was a compound consisting of boiled (or raw) linseed oil, mineral oil, and a dryer, mixed together. The names of the other ingredients, to wit, mineral oil and dryer, did not and do not appear upon said label or elsewhere upon the package containing such product. Respondents admit that said product

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should be described as "Inedible compound boiled (or raw) linseed oil and mineral oil and dryer"; and agree to so label in the future.

PAR. 4. That the said respondent Malone Oil Company, at the request and instance of the said respondents the Star Provision Company and B. Marx, trading under the name of Liberty Oil Products Company, applied the aforesaid brand or label (hereinbefore set forth in par. 3 hereof) to the said oil products so sold and advertised, as aforesaid, by the aforesaid respondents the Star Provision Company, and B. Marx, trading under the name of Liberty Oil Products Company. The said brand or label was stenciled, at the request and instance of the last-mentioned respondents, upon the barrels or containers of the said products.

PAR. 5. The said respondents the Star Provision Company and B. Marx, under the said name, to wit, Liberty Oil Products Company, have during the year last past circulated, to prospective customers in various States of the United States, certain circular letters or advertisements, true copies whereof were attached to the said agreed statement of facts and incorporated therein, and marked, respectively, "Exhibit 1," "Exhibit 2," "Exhibit 3," and "Exhibit 4." Said circular letters, distributed as aforesaid by the respondents aforesaid, advertised and offered for sale certain oil products, which oil products in all cases were not pure oils of the kind specified, but were compounded with mineral oil. Said circular letters are here set forth in full, as follows:

EXHIBIT 1.

Lard Oil	THE STAR PROVISION Co.	Seal Oil
Fish Oil	Animal Oils	Cod Oil
Neatsfoot Oil	1836 Euclid Avenue	Whale Oil
	Cleveland, O.	

You are undoubtedly aware that there is an enormous shortage of Animal Oils, which is likely to continue for some time to come. We desire to call your attention to the fact that we are manufacturing special grades of this material and while we do not guarantee our products to be 100% pure, we feel confident that the same will meet your requirements for all mechanical and industrial uses. Shipments are forwarded subject to your inspection and approval.

We are in position to make prompt shipment and quote subject to immediate acceptance the following:

Extra W. S. Lard Oil.....	\$1.62 per gallon
Extra Lard Oil.....	1.45 " "
No. 1 Lard Oil.....	1.35 " "
No. 2 Lard Oil.....	1.18 " "
Brown Strained Fish Oil.....	1.16 " "
Straits Fish Oil.....	.85 " "
Sperm Oil.....	1.50 " "

## Findings.

S F. T. C.

Prices quoted above are for delivery as you may desire between this date and February 1, in barrel lots, freight paid to your City. Where five or more barrels are purchased we allow a reduction of two cents per gallon.

We feel sure that by placing your business with us for any of the above grades of Oil the same will effect you a liberal saving, and you have our guarantee for quality as well as prompt deliveries.

May we be favored with your order?

Very truly, yours,

THE STAR PROVISION COMPANY.

## EXHIBIT 2

Lard Oil	THE STAR PROVISION Co.	Cod Oil
Fish Oil	Animal Oils	Seal Oil
Neatsfoot Oil	1836 Euclid Avenue	Whale Oil
	Cleveland, O.	

You are undoubtedly aware that there is an enormous shortage of Animal Oils, and considerable difficulty is encountered in making any kind of shipments. For this reason we suggest that you place orders now for your immediate or future requirements.

Subject to immediate acceptance by return mail and for delivery as you may desire between this date and September 1, we quote:

Inedible Comp. Extra W. S. Lard Oil.....	\$1.44 per gallon
Inedible Comp. No. 1 Lard Oil.....	1.18 " "
Inedible Comp. No. 2 Lard Oil.....	1.04 " "
Inedible Comp. Prime Neatsfoot Oil.....	1.46 " "
Inedible Comp. Extra Neatsfoot Oil.....	1.20 " "
Inedible Comp. No. 1 Neatsfoot Oil.....	1.06 " "
Inedible Comp. Sperm Oil.....	1.30 " "
Inedible Comp. Brown Strained Fish Oil.....	1.12 " "
Inedible Comp. Straits Fish Oil.....	1.02 " "

The above quotations are for delivery F. O. B. your City, in barrel lots. Where four or more barrels are ordered we allow a discount of 3¢ per gallon. We also pack the above in Half-barrels and case lots containing 12 1-gallon cans or 2 5-gallon cans. Where one-gallon cans are purchased we place labels on each can bearing your name and address.

Our oils are guaranteed for all mechanical and industrial purposes, and shipments are forwarded subject to your inspection and approval. We feel confident that you will effect quite a saving in placing your business with us for immediate or future delivery.

Kindly let us hear from you should you be interested.

Very truly, yours,

THE STAR PROVISION COMPANY.

## EXHIBIT 3.

Lard Oil	THE STAR PROVISION Co.	Cod Oil
Fish Oil	Animal Oils	Seal Oil
Neatsfoot Oil	1836 Euclid Avenue	Whale Oil
	Cleveland, O.	

Owing to the increased cost of raw materials, we are looking for advances on all grades of Animal Oils, and if you expect to be in the market between this date and

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July first, we suggest that you cover now your requirements for immediate or future delivery.

Subject to immediate acceptance, we quote:	bbis.	½ bbis.	
Inedible Com. E. W. S. Lard Oil.....	\$1.48	\$1.53	per gallon
“ “ No. 1 Lard Oil.....	1.16	1.21	“ “
“ “ Prime Neatsfoot Oil.....	1.52	1.57	“ “
“ “ No. 1 Neatsfoot Oil.....	1.18	1.23	“ “
“ “ Menhaden Fish Oil.....	1.18	1.23	“ “
“ “ Straits Fish Oil.....	1.04	1.09	“ “
“ “ Sperm Oil.....	1.35	1.40	“ “

The above quotations are F. O. B. your City, and for delivery as you may desire between this date and July first. We also pack the above in case lots containing 12 1-gallon cans or 2 5-gallon cans. Where purchased in this manner we place labels on the cans bearing your name and address.

Our products are guaranteed for all mechanical and industrial purposes, all shipments being forwarded SUBJECT TO YOUR INSPECTION AND APPROVAL. We feel sure that by placing your business with us you will be effecting a liberal saving, and you have our guarantee for quality as well as prompt delivery.

Are you in the market? May we be favored with your order?

Very truly, yours,

THE STAR PROVISION COMPANY.

EXHIBIT 4.

LIBERTY OIL PRODUCTS CO.  
Oils for Industrial Uses  
325 Union Building  
Cleveland, O.

Subject: Linseed Oil and Turpentine.

You are undoubtedly aware that the market price on Linseed Oil and Turpentine has advanced to practically the highest price ever known. For this reason we are producing a special grade of oil, and while we do not guarantee same to be absolutely pure, we will, however, guarantee it for all painting purposes.

We are in position to make prompt shipment, and quote subject to immediate acceptance:

Comp. Raw Linseed Oil.....	\$1.53	per gallon
Comp. Boiled Linseed Oil.....	1.55	“ “
Comp. Turpentine.....	1.54	“ “

The above quotations are for barrel lots, F. O. B. your City, less freight, and for delivery as you may desire between this date and March fifteenth.

We are confident that once you try our product you will purchase no other. All orders are subject to your inspection and approval.

Are you in the market? May we be favored with your order?

Very truly, yours,

THE LIBERTY OIL PRODUCTS CO.

PAR. 6. Said circular letters, so distributed as aforesaid, were false and misleading, and had a tendency and capacity to mislead and deceive said prospective customers, and directly tended to



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mislead and deceive said prospective customers, and to induce them to believe that part of the oil products, so offered for sale and advertised as aforesaid, were pure oils of the kind specified, and not compounds, mixtures, or combinations of such oils with mineral oil, and that the rest of such oil products were special grades of special compound oils, entirely proper for all mechanical, industrial, or painting purposes, and not compounds, mixtures, or combinations of oils of the kind specified with mineral oil.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the several respondents and the agreed statement of facts duly executed by counsel for respondents and for the Commission, approved by the Commission, and filed in the records and files of this case in lieu of testimony and as the evidence in this case; and the Commission having made its findings as to the facts with its conclusions that the several respondents have violated the provisions of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

*It is now ordered:*

I. That respondents the Star Provision Company and B. Marx, trading under the name and style of Liberty Oil Products Company, do severally and jointly *cease and desist*.

(1) From selling or offering for sale in interstate commerce any compound, mixture, or combination of linseed oil with mineral oil or other substances which is labeled or branded as "linseed oil," unless the name or names of such other oil, to wit, mineral oil, or such other substances, be also displayed upon such labels or brands, in conjunction with the words "linseed oil" and in letters of the same size, shape, and prominence as said words "linseed oil"; and

(2) From holding out or offering for sale in interstate commerce, by means of letters, circulars, or other advertisements, any com-

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pound, mixture, or combination of any of the following several oils, to wit, turpentine, linseed oil, sperm oil, lard oil, brown strained fish oil, straits fish oil, neatsfoot oil, or menhaden fish oil, with either mineral oil or other oils or substances, unless it clearly and plainly appears upon all of such letters, circulars, or other advertisements that such products are compounds, mixtures, or combinations of the several oils aforesaid, and not pure turpentine, linseed oil, sperm oil, lard oil, brown strained fish oil, straits fish oil, neatsfoot oil, or menhaden fish oil, respectively; and unless such letters, circulars, or other advertisements state clearly and plainly in letters of equal size, shape, and prominence the name or names of such oil, to wit, mineral oil, or such other oils or substances, used in a compound, mixture, or combination with any of the several oils aforesaid, to-wit, turpentine, linseed oil, sperm oil, lard oil, brown strained fish oil, straits fish oil, neatsfoot oil, or menhaden fish oil, wherever said oils last mentioned are quoted, offered for sale, or otherwise advertised in said letters, circulars, or other advertisements; and

II. That respondent Malone Oil Company do *cease and desist* from applying or affixing any label or brand to or upon any barrel or other container of any compound, mixture, or combination of linseed oil with mineral oil or other substances, at the request and instance of respondents, Star Provision Company or B. Marx, or either of them, or of any other individual, company, or corporation, or at all, unless the name or names of such other oil, to wit, mineral oil, or such other substances, be also displayed upon such label or brand in conjunction with the words "linseed oil," in letters of the same size, shape, and prominence as said words "linseed oil."

*It is further ordered*, That the respondents, the Star Provision Company, Malone Oil Company, and B. Marx, trading under the name and style of Liberty Oil Products Company, do, within thirty (30) days from the date of the service upon them of this order, file with the Commission individual and separate reports for each of the said respondents, setting forth in detail the manner and form in which each of them has complied with the order of the Commission herein set forth.

## FEDERAL TRADE COMMISSION

v.

## GUARANTEE VETERINARY CO. AND GEORGE L. OWENS.

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

Docket 843—June 8, 1921.

## SYLLABUS.

Where a concern and an individual, engaged in the sale of salt blocks for live stock under the brand name "Sal-Tonik,"

- (a) Falsely advertised the ingredients of said product; and
- (b) Advertised "U. S. GOVERNMENT ADOPTS SAL-TONIK—the Quartermaster's Department of the U. S. Army has ADOPTED SAL-TONIK and purchased our entire Southern output for use in the U. S. Cavalry. \* \* \*," reproducing a letter, falsely alleged to have been written by the "Assistant Veterinarian of the U. S. Army at Camp Johnston," indorsing such product and the results of its use at said camp; the facts being that only one purchase thereof was made by the Government, and that in other respects the advertising was false and misleading:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Guarantee Veterinary Co. and George L. Owens, 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, the Guarantee Veterinary Co., is an association in the form of a trust, having its principal office and place of business in the city of Chicago, State of Illinois, of which the respondent George L. Owens is the controlling and managing trustee, and that the respondents are now and for more than a year last past have been engaged in the sale of salt in the form of blocks for the use of live stock under the brand name of "Sal-Tonik" in and among the several States of the United States and the District

of Columbia, in direct competition with other persons, copartnerships, and corporations also engaged in the sale of block salt for the use of live stock.

PAR. 2. That in connection with the sale of said "Sal-Tonik" blocks in interstate commerce as aforesaid, the respondents are now and for more than a year last past have been publishing and distributing in and among the several States of the United States and the District of Columbia, advertising matter containing false and misleading statements, among which are representations and implications to the effect that the said "Sal-Tonik" blocks contain certain medicinal ingredients; that the respondents operate a number of factories in various parts of the United States, the total product of one of which was purchased and thereby indorsed by the Quartermaster Department of the United States Army; and that the respondents own and operate certain large and expensive machinery necessary for the manufacture of said "Sal-Tonik" blocks, all of which was designed to and does mislead the purchasing public into the belief that respondents' product possesses certain unique and beneficial characteristics and tends to secure for it an undue preference over the product of competitors.

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

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondents, the Guarantee Veterinary Co. and George L. Owens, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

The respondents having entered their appearance by their attorneys and filed their answer herein, hearings were had, and evidence was thereupon introduced in support of the allegations of said complaint and on behalf of the respondents before an examiner of the Federal Trade Commission theretofore duly appointed, and thereupon this proceeding came on for final hearing, the Commission and respondents having, through their respective attorneys, filed briefs, and the Commission having heard the argument of counsel on the merits of the case and having duly considered the same and the record and being now duly advised in the premises, makes this its findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Guarantee Veterinary Co., is an association in the form of a trust, having its principal office and

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place of business in the city of Chicago, State of Illinois, of which the respondent, George L. Owens, is the controlling and managing trustee, and that the respondents are now and for more than two years last past have been engaged in the sale of salt in the form of blocks, for the use of live stock, under the brand name "Sal-Tonik," in and among the several States of the United States and the District of Columbia, in direct competition with other persons, copartnerships, and corporations also engaged in the sale of block salt for the use of live stock.

PAR. 2. That during the years 1918 and 1919 the respondents printed and caused to be circulated in and throughout the various States of the United States, a circular in which it stated that its product, Sal-Tonik, contained the following ingredients: Sulphate of iron (re-dried), carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, pure salt, chloride of magnesia, Epsom salts, Glauber's salts, bicarbonate of soda, oxide of iron, mineralized humoides, American worm seed, Levant worm seed, capsicum (red pepper); when in truth and in fact, respondent's product, Sal-Tonik, did not contain all of said ingredients, and did not contain carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American worm seed, Levant worm seed, or capsicum (red pepper).

PAR. 3. That during the years 1918 and 1919 respondents advertised in the Cooperative Manager and Farmer (Commission's Exhibit No. 10), a magazine published at Minneapolis, Minn., which had a general circulation through the medium of the mails and other distributing agencies in and throughout various States and Territories of the United States and the District of Columbia, and also by circulars prepared and printed by respondents, which they caused to be circulated throughout various States and Territories of the United States and District of Columbia, the following:

U. S. GOVERNMENT ADOPTS SAL-TONIK.—The Quartermaster's Department of the U. S. Army has ADOPTED SAL-TONIK and purchased our entire southern output for use in the U. S. Cavalry. \* \* \*

The U. S. Army used Sal-Tonik, as is shown by a letter which appears below, written by the Assistant Veterinarian of the U. S. Army at Camp Johnston. \* \* \*

CAMP JOSEPH E. JOHNSTON, FLA.,

January 25, 1919.

GUARANTEE VETERINARY COMPANY,  
Chicago, Illinois.

To whom it may concern:

While acting as 2d Lt., Vet., U. S. A., Auxiliary Remount Depot No. 333, Camp Joseph E. Johnston, Florida, I had the opportunity of recognizing the value of SAL-TONIK. Large numbers of animals were kept in corrals in this camp and naturally much sickness would be expected; however, I noticed that where

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the animals had access to SAL-TONIK they improved in flesh and vitality. There was a very small percentage of digestive disturbances such as indigestion, colic, impactions, and diseases of systemic origin.

Having recognized the value of SAL-TONIK I highly recommend it as an efficient medicinal salt of superior quality.

(Signed) J. F. SWAIN,

*2d Lt., Vet., U. S. A., Auxiliary Remount Depot 333,*

*Camp Joseph E. Johnston.*

That the Palestine Salt & Coal Co., of Palestine, Tex., made salt blocks for respondents, the respondents furnishing the medical ingredients and the Palestine Salt & Coal Co. furnishing the labor and salt. That the Quartermaster Department of the United States Army purchased in the month of December, 1917, 1,200 blocks of Sal-Tonik at Palestine, Tex., from the Palestine Salt & Coal Co., who were agents for the respondents, and that this one purchase was the only one made by the United States Government.

That the United States Government did not adopt Sal-Tonik.

That Mr. J. F. Swain was not assistant veterinarian of the United States Army at Camp Johnston and at the time the above letter was written, he was not a second lieutenant in the United States Army, nor was he located at Camp Joseph E. Johnston, Fla.

## CONCLUSIONS.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered,* That the respondents, Guarantee Veterinary Co. and George L. Owens, their officers, agents, servants, and representatives do cease and desist, directly or indirectly:

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From publishing or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, advertisements, circular letters, or other printed matter whatsoever wherein it is falsely stated, set forth, or held out to the general public that the respondents' product, Sal-Tonik, contains carbonized peat, charcoal, tobacco, quassia, sulphur, gentian, mineralized humoides, American worm seed, Levant worm seed, or capsicum (red pepper), or any other ingredients, medical or otherwise, if said Sal-Tonik does not then, in fact, contain each and all of the ingredients which are stated in the advertisement to enter into its composition;

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 falsely stated, set forth, or held out to the public:

(1) That the United States Government, or any department, branch, or agency thereof, has adopted respondents' product, Sal-Tonik;

(2) That respondents have sold their entire southern output to the United States Government, or to any department, branch, or agency thereof;

From using as an advertisement of their product, Sal-Tonik, a certain letter, dated January 25, 1919, and signed by J. F. Swain, purported to be at the time of signature, a second lieutenant in the United States Army at Camp Joseph E. Johnston, Fla.

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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## CUPPLES COMPANY.

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

Docket 571—June 8, 1921.

## SYLLABUS.

Where a corporation engaged in the importation and sale of Japanese safety matches imported and sold the same in containers of the same size, shape, material, and appearance as those in which Swedish and American safety matches were sold and marketed in the United States, on the labels of which containers were conspicuously impressed the distinctive and commonly used Swedish words "Sakerhets Tandstickor" and "Tandsticks-fabriks," and medallion designs resembling, except upon minute inspection, representations of medals awarded Swedish manufacturers of safety matches at various European expositions and by them placed upon the containers of their product, and also inconspicuously the words "Made in Nippon," but nothing prominently suggesting Japan to the ordinary American purchaser; with the natural and probable tendency to mislead the purchasing public into believing that such Japanese matches were of Swedish origin:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Cupples 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 on information and belief as follows:

PARAGRAPH 1. That the respondent, Cupples Co., is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, having its principal place of business located at the city of St. Louis, in said State; that said respondent is now and for more than one year last past has been engaged in importing safety matches of the strike-on-the-box kind of Japanese manufacture and engaged in selling, distributing, and disposing of said safety



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matches of Japanese manufacture of the character and in the manner hereinafter mentioned in competition with manufacturers, distributors, jobbers, and dealers in safety matches of similar kind, among the several States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, co-partnerships, and corporations similarly engaged.

PAR. 2. That, in the conduct of its business, respondent imports from Japan safety matches of Japanese manufacture and transports the same through other States of the United States in and to the city of St. Louis, State of Missouri, and its other branch offices located in various States of the United States where said safety matches are sold, distributed, and shipped to purchasers thereof; that there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between Japan and the various States and Territories of the United States and the District of Columbia and more particularly from Japan, to and through the city of St. Louis, State of Missouri, United States of America, and from there to and through other States of the United States and Territories thereof and the District of Columbia.

PAR. 3. That the aforesaid safety matches of Japanese manufacture, imported and sold by respondent for more than one year last past in commerce as aforesaid, are put up in boxes bearing the brand "The Best Black Eagle" with wording on the box or label pasted on said box bearing distinctive Scandinavian words; that the use of the labels bearing Scandinavian words on said boxes of safety matches made in Japan and sold and disposed of in commerce as aforesaid by respondent is calculated and designed to deceive the purchasing public into the belief that said matches are of Scandinavian origin and manufacture; that the sale and distribution by respondent in commerce as aforesaid of safety matches bearing labels of Scandinavian words have the effect of suppressing competition in interstate commerce in the sale of safety matches of the strike-on-the-box kind and are calculated and designed to deceive the purchasing public and do deceive the purchasing public into the belief that respondent's matches are of Scandinavian origin and to purchase and pay for said safety matches as and for safety matches of Scandinavian origin and manufacture.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Cupples Co., charging it with

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

The respondent having entered its appearance and filed its answer herein, and attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken as the facts for this proceeding by the Commission and in lieu of testimony herein, and that the Commission should forthwith proceed upon such agreed statement of facts 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 parties having waived any and all rights they may have to require the introduction of such testimony or to file briefs or make oral argument in the above-entitled matter, 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, Cupples Co., is a corporation existing and doing business under and by virtue of the laws of the State of Missouri, having its principal place of business located in the city of St. Louis, in said State; that said respondent for more than one year prior to May 23, 1919, engaged in importing safety matches of the strike-on-the-box kind of Japanese manufacture, and thereafter, as well as theretofore, has been engaged in selling, distributing, and disposing of said matches of Japanese manufacture of the character and in the manner hereinafter mentioned in competition with manufacturers, distributors, jobbers, and dealers in safety matches of similar kind 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.

PAR. 2. That now and for many years last past there have been manufactured in Sweden and sold throughout the United States various brands of safety matches in containers or boxes of the shape, size, and material generally used for such matches; that said containers or boxes in which they have been and are marketed in the United States carry labels which ordinarily contain the certain distinctive Swedish words "Sakerhets Tandstickor," meaning safety matches; "Tandsticks fabrik," meaning match factory; and "Impregnerade," meaning impregnated, associated with the words "Made in Sweden"; that some of the labels upon matches manufac-

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tured in Sweden and sold in the United States also bear, in addition to the distinctly Swedish words, pictorial representations in miniature of medals awarded by various European expositions, indicating the place and date of such awards; and that the labels of which photostatic copies are hereto attached<sup>1</sup> and made part hereof are now and for many years last past have been used in the United States upon the containers or boxes of safety matches manufactured in Sweden.

PAR. 3. That in the conduct of its business respondent imported prior to May 23, 1919, from Japan safety matches of Japanese manufacture and transported the same through other States of the United States in and to the city of St. Louis, State of Missouri, and its other branch offices located in various States of the United States, where said safety matches were sold, distributed, and shipped to purchasers thereof; that there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between the city of St. Louis, State of Missouri, United States of America, and from there to and through other States of the United States and the Territories thereof and the District of Columbia. That the aforesaid safety matches of Japanese manufacture imported by respondent prior to May 23, 1919, and sold by respondent for more than one year last past in commerce as aforesaid have been and are marketed and sold in the United States in containers or boxes of the same standard size, shape, and appearance as those in which Swedish and American safety matches are sold and marketed therein, with labels thereon bearing the distinctive Swedish words "Tandsticksfabrik," meaning match factory, and "Sakerhets Tandstickor," meaning safety matches, a photostatic copy of which label is hereto attached and incorporated herein;<sup>1</sup> that upon the label so used by respondent appear the words "Made in Nippon," but in an inconspicuous position and Nippon being a word not generally understood by the ordinary purchaser as designating Japan; and that thereon are impressed certain medallion designs importing medals or awards without reference to or indicating date or place thereof and requiring minute inspection to distinguish the same from similar representations so found as aforesaid on the labels of Swedish matches or boxes; that there is no prominent appearance on said label of respondent of design or words suggestive of Japan to the ordinary American purchaser, while the shape and appearance of the containers in conjunction with the said label on which distinctive Swedish words so appear are clearly suggestive of Swedish manufacture to such purchaser.

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<sup>1</sup> Not printed.

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PAR. 4. That the use of such distinctive Swedish words and other inscriptions upon the containers or boxes of same size, shape, material, and appearance as those in which Swedish safety matches have been and are marketed and sold in the United States, for the sale of safety matches manufactured in Japan, is calculated and likely under all the circumstances, and the natural and probable effect will be to mislead and deceive the purchasing public in the United States into the belief that the Japan matches are of Swedish origin and manufacture.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and upon an agreed statement of facts, wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such agreed statement of facts to enter its report and findings as to the facts and its orders disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and which said report is hereby referred to and made part hereof: Now, therefore,

*It is ordered*, That the respondent, Cupples Co., and its officers, directors, agents, servants, and employees, cease and desist from the sale or other distribution, in the United States of America, of matches manufactured in Japan, in boxes or other containers, with labels or inscriptions thereon bearing or including the words "Tandsticksfabriks" or "Sakherhets Tandstickor," or any other Swedish phrase or phrases, word or words, character or characters, symbol or sym-

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bols, verbal or pictorial, indicative or suggestive of Swedish origin or manufacture.

*And it is further ordered,* That the respondent 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.

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## McCLOSKEY VARNISH COMPANY.

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

Docket 748—June 10, 1921.

## SYLLABUS.

Where a corporation competitively engaged in the manufacture and sale of varnish, sold its product, not made for the Government or in accordance with Government specifications, in containers falsely and deceptively labeled and branded "Government Spar":

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the McCloskey Varnish Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized under the laws of the State of Pennsylvania, with principal place of business in Philadelphia, in said State.

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

PAR. 3. That respondent in the course of its business, as described in paragraph 2 hereof, makes use of deceptive labels which it places upon the containers of a varnish sold by it, which labels contain the words "Government Spar," although the varnish so labeled had not been procured from the Government, or manufactured for

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its use, or made in accordance with any Government formula or specifications; which labels were calculated to and did mislead and deceive the purchasing public.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the intent and meaning of section 5 of an act of Congress entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

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

The respondent having entered its appearance by its attorney, H. M. McCaughey, and filed its answer herein, thereafter made, executed, and filed an agreed statement of facts, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the facts in this case, and in lieu of testimony, and proceed forthwith upon such agreed statement of facts to make its findings as to the facts and such order as it may deem proper to enter thereon, without the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission, being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, McCloskey Varnish Co., is a corporation duly incorporated and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office in the city of Philadelphia, in said State, and is engaged in the manufacture of varnishes, japans, and fillers.

PAR. 2. The respondent, McCloskey Varnish Co., sells its products, and causes same to be transported to purchasers thereof, throughout the different States of the United States, and there is continually, and has been at all times herein mentioned, a constant current of trade in commerce in said products between and among the various States of the United States; and the respondent conducts its business in competition with other corporations, copartnerships, and individuals similarly engaged.

PAR 3. Until it learned of this investigation, about November 1, 1920, the respondent, in the sale and shipment of its products as hereinbefore described, has sold and shipped varnish in containers which it labeled and branded "Government Spar." Dealers purchasing this varnish offer it to the general purchasing public as thus labeled and branded. The varnish, the containers for which are so labeled and branded, was not procured from the Government of the United States, nor manufactured for its use, nor made in accordance with any United States Government formula, specification, or requirement. The aforesaid label and brand, used upon the containers for said varnish, indicates that said varnish was procured from the Government of the United States, or manufactured for its use, or made in accordance with some United States Government formula, specification, or requirement, and thereby the general purchasing public is led to believe that the said varnish, labeled and branded as aforesaid, is varnish obtained from the Government of the United States, or manufactured for its use, or made in accordance with some United States Government formula, specification, or requirement, which the general purchasing public believes to be varnish of an unusually high grade or character because approved by the United States Government.

PAR 4. Prior to about November 1, 1920, there were, and now are, manufacturers selling their products in commerce among the several States of the United States who make varnish similar to that made and sold by the respondent, but the containers for which are not labeled or branded with any word or words to indicate that the Government of the United States has had any connection with said varnish. Prior to about November 1, 1920, there were, and now are, manufacturers selling their products in commerce among the several States of the United States who sell varnish made for the United States Government, or according to United States Government formula, specification, or requirement, and represent, by labels and brands on such varnish, that it is varnish made for the United States Government or made according to formula, specification, or requirement of the United States Government.

#### CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create



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a Federal Trade Commission, to define its powers and duties, and for other purposes.”

## ORDER TO CEASE AND DESIST.

The proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent and the statement of facts agreed upon by the respondent and counsel for the Commission, and the Commission having made its findings as to the facts with its conclusion that the respondent has violated the provisions of the act of Congress approved September 26, 1914, entitled, “An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,”

*It is now ordered,* That the respondent, McCloskey Varnish Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly employing or using the label or brand “Government,” or any similar descriptive label or brand, on varnish, or the container therefor, except either (1) when the varnish had been obtained from the United States Government; or (2) when the varnish has been manufactured for, and accepted by, the United States Government; or (3) when the varnish has been made in accordance with some United States Government formula, specification, or requirement, and the word or term indicating the United States Government is joined or used with some other words or terms indicating compliance with some United States Government formula, specification, or requirement (e. g., made in accordance with Government W. D. Specification No. 97); or (4) when the varnish has been obtained from some government other than the United States Government, and the word or term used to indicate government is joined or used with some other word or term indicating the government from which the varnish was obtained (e. g., French Government Spar Varnish); or (5) when the varnish has been manufactured for, and accepted by, some government other than the United States Government, and the word or term used to indicate government is joined or used with some other word or term indicating the government for which the varnish was manufactured and by which it was accepted (e. g., Canadian Government Spar Varnish); or (6) when the varnish has been manufactured in accordance with the formula, specification, or requirement of some government other than the United States Government, and the word or term used to indicate government is joined or used with some other words or terms indicating compliance with the formula, specification, or requirement

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of the government in accordance with whose formula, specification, or requirement the varnish has been manufactured (e. g., made in accordance with specification of the Italian Government).

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

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Complaint.

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## FEDERAL TRADE COMMISSION

v.

## RICCO COMPANY, INC.

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

Docket 543—June 13, 1921.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of dyestuffs and kindred products, gave to employees of customers, without the knowledge or consent of their employers, sums of money as an inducement for them to influence their employers to purchase its products and to refrain from dealing with its competitors:

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

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Ricco Co., Inc., hereinafter referred to as respondent, within the 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 Ricco Co., Inc., a corporation organized and existing and doing business under and by virtue of the laws of the State of Rhode Island, having its principal office and place of business at the city of Providence, in the State of Rhode Island, is now and for more than one year last past has been engaged in manufacturing and selling dyestuffs 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, co-partnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling dyestuffs and kindred products throughout the States and Territories of the United States the respondent since January, 1919, has been giving and offering to give 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, 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.

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

The respondent having neither filed an answer nor entered its appearance herein, and a hearing having been had, and evidence was introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed:

Thereupon this proceeding came on for final hearing, the respondent having due notice thereof, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Ricco Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Rhode Island, having its principal office and place of business at the city of Providence, State of Rhode Island, and is now and at all times hereinafter mentioned has been engaged in manufacturing, selling, and transporting dyestuffs and kindred products, through and among the various 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, the Ricco Co., Inc., in the course of its business of selling and transporting dyestuffs as described in paragraph 1 hereof, since the date of its incorporation in January, 1919, had given to dyers and finishers in about 20 per cent of the textile mills to which the respondent sold its products, without the knowledge or consent of their employers and without other consideration therefor, sums of money amounting to from \$30 to \$150 per month, to obtain the good will of the dyer or finisher, and as an

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inducement to them to recommend to their employers the use and purchase of respondent's products and to influence their employers to refrain from dealing with competitors of respondent. That the dyers and finishers in such mills have a technical knowledge of the proper use and application of dye products and usually test the dyes and recommend to mill owners the dye products to be used in the mill.

**CONCLUSION.**

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

**ORDER TO CEASE AND DESIST.**

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

*It is therefore ordered,* That the respondent, Ricco Co., Inc., its officers, directors, agents, salesmen, servants, and employees, cease and desist from directly or indirectly giving to employees of its customers, or prospective customers, or those of its competitors' customers or prospective customers, sums of money or gratuities of any kind whatsoever as an inducement to influence their employers to purchase or contract to purchase dyestuffs and kindred products from the respondent or for the purpose of persuading such customers or prospective customers to refrain from buying or contracting to buy from competitors of the respondent.

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

Complaint.

FEDERAL TRADE COMMISSION

v.

EDWIN S. JONES, DOING BUSINESS UNDER THE NAME  
AND STYLE PHILADELPHIA TEXTILE CHEMICAL  
WORKS.

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

Docket 542.—June 30, 1921.

SYLLABUS.

Where an individual engaged in the manufacture and sale of soap and wool oil, made to employees of customers, without the knowledge and consent of their employers, gifts of money, and loans of money without expectation of repayment, as an inducement for them to influence their employers to purchase its products and to refrain from dealing with its competitors:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Edwin S. Jones, doing business under the name and style of Philadelphia Textile Chemical Works, 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, Edwin S. Jones, doing business under the name and style of Philadelphia Textile Chemical Works, with his principal office and place of business at the city of Philadelphia, in the State of Pennsylvania, is now and for more than one year last past has been engaged in manufacturing and selling soap and wool oil 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.

## Findings.

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PAR. 2. That in the course of his business of manufacturing and selling soap and wool oil throughout the States and Territories of the United States the respondent has, since 1917, given and loaned 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, soap and wool oil, 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.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Edwin S. Jones, doing business under the name and style of Philadelphia Textile Chemical Works, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having neither filed an answer nor entered his appearance herein, a hearing was had, after due notice thereof to said respondent, and evidence was introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed.

Thereupon this proceeding came on for final hearing, the respondent having due notice thereof, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent herein, Edwin S. Jones, is now and since the year 1917 has been doing business under the name and style of Philadelphia Textile Chemical Works, and at all times since then has been engaged in manufacturing, selling, and transporting soap and wool oil through and among several of the States of the United States adjacent to the State of Pennsylvania in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. The respondent, Edwin S. Jones, doing business under the name and style of Philadelphia Textile Chemical Works, in the course of his business of selling soap and wool oil as described in paragraph 1 hereof, since starting in business in 1917, has made gifts of money to foremen finishers, and in some instances, loans of money without the expectation of repayment to foremen finishers, in a few of the textile mills to which the respondent sells and has

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sold his products, all without the knowledge and consent of the employers of said foremen finishers, and without other consideration therefor, said sums of money aggregating in all approximately \$175, which said gifts and loans were made and given as and for an inducement to said foremen finishers to recommend to their employers the use and purchase of respondent's products, and to influence their employers to refrain from dealing with or purchasing from competitors of the respondent. Foremen finishers in such mills have a technical knowledge of the proper use and application of soap and other finishing products used in textile mills and usually test such products and recommend to the mill owners the brand of soap and other finishing products to be used in the mill.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is therefore ordered,* That the respondent, Edwin S. Jones, doing business under the name and style of Philadelphia Textile Chemical Works, and his agents, salesmen, servants, and employees, cease and desist from directly or indirectly making gifts of money or other things of value, or loans of money or other things of value without an expectation of repayment, to employees of his customers or prospective customers, or those of his competitors' customers or prospective customers, without the knowledge and consent of their respective employers, and for the purpose and with the effect of inducing such employees to influence, persuade, or induce their employers to purchase from the respondent soap and wool oil, or to refrain from dealing with competitors of respondent.



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

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## UNITED INDIGO &amp; CHEMICAL COMPANY, LTD.

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

Docket 596.—June 30, 1921.

## SYLLABUS.

Where a corporation dealing in dyestuffs, chemicals, and other dyeing goods and products, gave to employees of customers and prospective customers, without the knowledge and consent of their employers,

(a) Gratuities of money, and

(b) Dinner parties, theater and baseball tickets, and lavish entertainment at large expense,

As an inducement for them to influence their employers to purchase its products or to refrain from dealing with its competitors:

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

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the United Indigo & Chemical Co. (Ltd.) has been and is now using unfair methods of competition in commerce, in violation of the intent and meaning of section 5 of an act of Congress, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, and the Federal Trade Commission, having determined that a complaint should issue against said United Indigo & Chemical Co. (Ltd.) and that a full and complete inquiry with respect thereof would be to the interest of the public.

Therefore, the Federal Trade Commission, complaining, shows that it is informed, in such a manner that it believes the facts to be substantially as herein set out, and therefore charges as follows:

PARAGRAPH 1. That the said United Indigo & Chemical Co. (Ltd.) is a corporation, as defined by the act known as the Federal Trade Commission act, approved September 26, 1914, chartered, organized, and existing under the laws of Great Britain; that it has domesticated and registered in the State of Massachusetts, in the United States of America, and maintains its principal office and place of business in the United States, in the city of Boston, in said State of Massachusetts, and is engaged in the manufacture and sale, in commerce, of dyestuffs, chemicals, and other dyeing goods and products.

## Complaint.

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PAR. 2. That the said United Indigo & Chemical Co. (Ltd.) is and has been continuously for the year last past, and for a longer period of time, engaged in commerce as defined by the act of Congress, approved September 26, 1914, above mentioned, and that it is manufacturing and purchasing dyestuffs, chemicals, and other dyeing goods and products from manufacturers, dealers, and others in the State of Massachusetts and in other States and Territories of the United States and in the District of Columbia and foreign countries and having the said dyestuffs, chemicals, and other dyeing goods and products shipped and transported, in commerce, to, in, and through the State of Massachusetts to its place of business in the city of Boston and selling, shipping, and transporting said goods, in commerce, from its place of business in said city of Boston, in the State of Massachusetts, among other States and Territories of the United States and the District of Columbia and into foreign countries, and there is continuously and has been, at all times within the year last past and more, a constant current of trade in commerce, by said respondent, in said dyestuffs, chemicals, and other dyeing goods and products, among and between the various States of the United States, the Territories thereof, and the District of Columbia and into foreign countries to and through the city of Boston, in the State of Massachusetts, and therefrom to and through other States of the United States and Territories thereof and the District of Columbia and into foreign countries.

PAR. 3. That the United Indigo & Chemical Co. (Ltd.), in the course of selling dyestuffs, chemicals, and other dyeing goods and products, in commerce, as defined by an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," has been for more than a year last past, and still is, engaged in unfair methods of competition, in commerce, in violation of section 5 of the abovenamed act, approved September 26, 1914, in that, in the conduct of its business in selling dyestuffs, chemicals, and other dyeing goods and products, it secretly and without the knowledge of the purchasers, consumers, or prospective purchasers of its goods offered to give, and did actually give, to the employees of its customers and purchasers of its goods and offered to give, and did actually give, to the employees of the customers of its competitors, dinners, theater tickets, prize-fight tickets, and also paid out and expended large sums of money in lavish entertainments to the employees of its customers, purchasers, and proposed customers and purchasers, and to employees of the customers and purchasers of its competitors, and also offered to pay, and did actually pay, secretly and without the

knowledge of its customers, purchasers, and competitors, cash commissions and other bonuses, prizes, rewards, compensations, and gratuities to the employees of its customers, purchasers, and to the employees of its competitors, all of which was done by respondent to induce such employees to advocate, push, and favor the goods and the sale of the dyestuffs, chemicals, dyeing, and other products of respondent over its competitors, and to induce the said employees of its customers, purchasers, and competitors to persuade, urge, and recommend to their employers to purchase the dyestuffs, chemicals, and other dyeing goods and products of respondent, instead of the goods of the competitors of the respondent, in order that such employees might receive the cash commissions, bonuses, prizes, rewards, compensation, and gratuities offered and promised by the said respondent, all of which acts of respondent are unfair methods of competition and in violation of the intent and meaning of section 5 of the Federal Trade Commission act, approved September 26, 1914.

PAR. 4. That by reason of the facts set out in the foregoing paragraphs of this complaint, the respondent has been guilty of unfair methods of competition in commerce as defined and prohibited by section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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

Pursuant to the provisions of an act of Congress, approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, United Indigo & Chemical Co. (Ltd.), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer and amended answer herein, and a hearing having been had and evidence introduced in support of the allegations of said complaint before an examiner of the Federal Trade Commission theretofore duly appointed;

Thereupon this proceeding came on for final hearing, and the respondent having waived the introduction of further evidence, and the attorneys for the Commission and the respondent having waived the filing of briefs and oral argument, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## Findings.

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## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, United Indigo & Chemical Co. (Ltd.), is a corporation organized and existing under the laws of Great Britain, having a registered office in the State of Massachusetts, in the United States of America, and a place of business in the city of Boston, in said State of Massachusetts, and is now and at all times hereinafter mentioned has been engaged in the selling and transporting of dyestuffs, chemicals, and other dyeing goods and products through and among the various States and Territories of the United States, the District of Columbia, and into foreign countries in direct competition with other persons, partnerships, and corporations similarly engaged.

PAR. 2. That the respondent, the United Indigo & Chemical Co. (Ltd.), in the course of its business as described herein, purchases dyestuffs, chemicals, and other dyeing goods and products from manufacturers, dealers, and others in the State of Massachusetts and in other States of the United States and foreign countries, transporting such products from said places of purchase through other States of the United States to their place of business in the city of Boston, State of Massachusetts, where they are kept and stored for their trade in selling such commodities.

PAR. 3. That the respondent, the United Indigo & Chemical Co., in the course of its business of selling dyestuffs, chemicals, and other dyeing goods and products, as described herein, for several years last [past] to July 1, 1919, gave to employees of its customers, without the knowledge and consent of their employers, gratuities in the form of money as an inducement to persuade, urge, and recommend to their employers the purchase of dyestuffs, chemicals, and other dyeing goods and products from respondent, or to refrain from purchasing such products from competitors of the respondent.

PAR. 4. That the respondent, the United Indigo & Chemical Co. (Ltd.), in the course of its business in selling dyestuffs, chemicals, and other dyeing goods and products, as described herein, for several years last past has given to employees of its customers and prospective customers, without the knowledge and consent of their employers, dinner parties, theater and baseball tickets, and expended large sums of money in lavish entertainment of such employees, as an inducement to persuade, urge, and recommend to their employers the purchase of dyestuffs, chemicals, and other dyeing goods and products from the respondent, or to refrain from purchasing such products from competitors of the respondent.

PAR. 5. That the annual sales of dyestuffs, chemicals, and other dyeing goods and products in the United States by the respondent,

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the United Indigo & Chemical Co., during the years 1916, 1917, and 1918 amounted to approximately \$700,000 per year, and its expenditures for entertainment and gratuities given to employees during that period averaged from \$40,000 to \$50,000 per year.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is therefore ordered,* That the respondent, the United Indigo & Chemical Co. (Ltd.), its officers, directors, agents, salesmen, servants, and employees cease and desist from directly or indirectly giving to employees of its customers, or prospective customers, or those of its competitors' customers or prospective customers, without the knowledge and consent of their respective employers, sums of money, dinner parties, theater and baseball tickets, and other forms of entertainment as an inducement to persuade, urge, or recommend to their employers the purchase of dyestuffs, chemicals, and other dyeing goods and products from the respondent, or to refrain from purchasing such dyestuffs, chemicals, and other dyeing goods and products from competitors of respondent, and

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

Complaint.

S F. T. C.

FEDERAL TRADE COMMISSION  
v.  
ORLEANS IRON WORKS, INC.

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

Docket 749.—June 30, 1921.

SYLLABUS.

Where a corporation engaged in the business of repairing and furnishing repair parts to ships, gave to captains and other employees of vessels, without the knowledge or consent of their employers, valuable gifts, cash commissions, and gratuities as an inducement to have such vessels repaired by it:

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

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Orleans Iron Works (Inc.), hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate and foreign 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, Orleans Iron Works (Inc.), is a corporation organized and existing under the laws of the State of Louisiana, with its principal office and place of business in the city of New Orleans, in said State.

PAR. 2. That respondent is engaged in the business, among other things, of repairing and furnishing repair parts to ships which reach the port of New Orleans, State of Louisiana, while engaged in the transportation of passengers and cargoes between ports in the various States of the United States and the transportation of passengers and cargoes between ports of the United States and foreign nations, in direct, active competition with other persons, partnerships, and corporations similarly engaged; that the respondent carries or causes to be carried aboard such vessels so engaged materials and repair parts and sends its employees aboard such vessels to install such parts and make such repairs thereon as may be required by the owners of such vessels.

## Findings.

PAR. 3. That the respondent, in the course of its business as described in paragraph 2 hereof, gives and has given to captains, engineers, and other employees of vessels reaching the port of New Orleans, without the knowledge or consent of their employers and without other consideration therefor, valuable gifts, cash commissions, and gratuities, to induce such officers and employees to have the ships operated by them for the owners thereof repaired, and repair parts for same furnished, by respondent; that the value of such gifts, cash commissions, and gratuities so given by the respondent aggregated in the first six months of its business approximately \$1,650, and that as a result of the giving of such gifts, cash commissions, and gratuities respondent added to its cost of doing business and was compelled to and did add to a fair charge for its services an amount approximating \$1,650, which is in addition to a fair charge for such services, and which additional amount the customers of the respondent, and eventually the public, must pay; that as a further result of the respondent's said practices, all of its competitors are affected, and the giving of valuable gifts and cash commissions by the respondent as aforesaid has tended to cause competitors of the respondent, who in many instances had not engaged in such practices, to give captains and engineers and other officers and employees of ships valuable gifts, cash commissions, and gratuities of substantially equal value and like amounts to those paid by respondent as aforesaid, for the same purposes and with the same effect, as a means of protecting their trade and preventing respondent from obtaining the business enjoyed by them.

PAR. 4. That by reason of the facts recited, the respondent has been using an unfair method of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Orleans Iron Works (Inc.), charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance and filed its answer herein admitting that it had engaged in the practice of giving valuable gifts, cash commissions, and gratuities to captains, engineers, and employees of the companies owning ships for whom it did repair work, as alleged in paragraph 3 of the complaint herein, and having stipulated and agreed that a statement of facts signed and executed



## Findings.

S F. T. C.

by the respondent and by Adrien F. Busick, acting chief counsel for the Federal Trade Commission, subject to the approval of the Commission, shall be taken as the facts in this proceeding, and agreeing and consenting that the Federal Trade Commission shall forthwith proceed upon said agreed statement of facts and answer herein to make and enter its findings as to the facts, its conclusion, and order disposing of this proceeding without the introduction of testimony, the filing of briefs, or oral argument in support of the same, and thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record and now being fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Orleans Iron Works (Inc.), is a corporation organized and existing under the laws of the State of Louisiana, with its principal office and place of business in the city of New Orleans, State of Louisiana, and is now and at all times hereinafter mentioned has been engaged in the business of repairing and furnishing repair parts for ships which reach the port of New Orleans while engaged in the transportation of passengers and cargoes between ports in the various States of the United States and of the United States and foreign nations, said business being conducted in direct competition with other persons, partnerships, and corporations similarly engaged; that the respondent carries or causes to be carried aboard such vessels so engaged materials and repair parts and sends its employees aboard such vessels to install such parts and make such repairs thereon as may be required by such vessel owners.

PAR. 2. That the respondent in the course of its business as described in paragraph 1 hereof, since March 1, 1920, has given to captains, engineers, and other employees of vessels reaching the port of New Orleans, without the knowledge or consent of their employers and without other consideration therefor, valuable gifts, cash commissions, and other gratuities to induce such officers and employees to have the ships operated by them for the owners thereof repaired and repair parts for same furnished by the respondent; that the value of such gifts, cash commissions, and gratuities so given by the respondent aggregated in the first six months of its business approximately \$1,650; and that as a result of the giving of such gifts, cash commissions, and gratuities, respondent added to its cost of doing business and was compelled to and did add to a fair charge for its services an amount approximating \$1,650, which is in addition to a

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## Order.

fair charge for such services, and which additional amount the customers of the respondent, and eventually the public, must pay.

## CONCLUSION.

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

## ORDER TO CEASE AND DESIST.

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

*It is ordered*, That the respondent, the Orleans Iron Works (Inc.), and its officers, directors, agents, servants, and employees cease and desist from directly or indirectly giving to captains and other officers and employees of vessels, valuable gifts, cash commissions, and gratuities as an inducement to have the ships operated by them for the owners thereof repaired and repair parts for same furnished by the respondent.

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

CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Dates of orders.	Docket Nos.	Respondents.	Commodities.	Charges. <sup>1</sup>	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1929. July 2	356	Remington Typewriter Co.	Typewriters and calculating or adding machines.	Rebates or discounts conditioned on exclusive or tying contracts in violation of sections 5 and 3 of the Federal Trade Commission and Clayton Acts, respectively; quantity discounts based on aggregate number of machines used by prospective purchaser, irrespective of their make, with the effect of preventing a small user or purchaser from obtaining the same discounts and giving an undue advantage to the large purchaser or user.	Answer.....	Sufficient showing of public interest not disclosed.
2	377	Royal Typewriter Co., Inc.	.....do.....	.....do.....	.....do.....	Do.
2	358	L. C. Smith & Bros. Typewriter Co.	Typewriting and calculating machines.	Quantity discounts based on aggregate number of machines used by prospective purchaser irrespective of their make, with the effect of preventing a small user or purchaser from obtaining the same discounts, and giving an undue advantage to the large purchaser or user.	.....do.....	Do.
2	359	Underwood Typewriter Co.	.....do.....	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products; <sup>2</sup> quantity discounts based on aggregate number of machines used by prospective purchaser irrespective of their make, with the effect of preventing a small user or purchaser from obtaining the same discounts, and giving an undue advantage to the large purchaser or user.	.....do.....	Sufficient showing of public interest not disclosed as to last count. Dismissed without prejudice as to first. No reasons assigned.
2	360	Woodstock Typewriter Co.	.....do.....	Quantity discounts based on aggregate number of machines used by prospective purchaser irrespective of their make, with the effect of preventing small users or purchasers from obtaining the same discounts and giving an undue advantage to the large purchaser or user.	.....do.....	Sufficient showing of public interest not disclosed.
2	363	Corona Typewriter Co.	Typewriting, calculating, and adding machines.	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products. <sup>3</sup>	.....do.....	Dismissed without prejudice; no reasons assigned.
2	368	Noiseless Typewriter Co.	.....do.....	.....do.....	.....do.....	Do.

9	505	C. D. Kenny Co., The.	Coffee and sugar.....	Combination sales with tying condition.....	Answer and trial.	Dismissed and discontinued "for the reason that the practice of tying commodities to a joint sale is an unfair method of competition where the seller has secured a preponderance of control over one of the commodities and uses such control to restrict competition unduly or to create a monopoly, and that such qualifying conditions not having been pleaded, an order to cease and desist would be imprudently issued upon the complaint in this case."
13	518	Benjamin Moore & Co.	Paint.....	Misbranding.....	Answer and stipulation.	Practice charged not a practice of respondent in its business, or known to, or authorized by it, but incidental to taking over newly acquired branch house.
21	567	Acme Coal Mining Co.	Coal; capital stock.....	Stimulation of competitor's trade name.....	Answer and trial.	Charge not sustained.
22	338	United States Food Products Corporation, Liberty Yeast Corporation, The Fagin Co., and Her- man Chaifetz.	Yeast.....	Bogus independents; enticing competitors' employees; using competitors' employees to deliver samples of respondent's products to said competitors' customers and to make false and disparaging statements with reference to said competitors' products to said competitors' customers; procuring and using valuable trade secrets from competitors' employees; circulating false, misleading, and derogatory statements about competitors' businesses, practices, and methods; selling below cost.	.....do.....	No reasons assigned.
Sept. 21	135	Standard Oil Co. of Louisiana.	Petroleum and oil pumps, tanks, and outfits.	Misrepresenting competitors' products and prices; inducing and attempting to induce breach of competitors' contracts; selling and loaning oil pumps, tanks, and outfits, respectively, below cost and at figures not affording a reasonable return; threatening dealers to sell direct to retailers unless they installed the line of equipment handled by it; falsely representing itself as the agent of devices competitive to the line handled by it, and quoting excessive prices on said devices; all in violation of section 5; and price discrimination in violation of section 2 of Clayton Act.	Answer.....	Dismissed without prejudice; no reasons assigned.
21	328	The Springfield Oil Products Co., Inc.	.....do.....	Leasing oil tanks, pumps, and devices for a nominal consideration, based on exclusive or tying contracts or dealings in violation of sections 5 and 3 of the Federal Trade Commission and Clayton Acts, respectively.	Answer and trial.	No reasons assigned.

<sup>1</sup> Except where otherwise stated, the matter charged is charged as a violation of sec. 5 of the Federal Trade Commission act.

<sup>2</sup> The language of the complaint reads in part: "A system of giving cumulative rebates in the sale of its products whereby purchasers of its products obtain at the end of each calendar year, or at the end of a definite period, certain rebates or discounts based and estimated upon the aggregate of the separate purchases made by such dealers during the calendar year or such fixed period."

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.
Oct. 23	325	American Oil & Supply Co.	Petroleum and oil pumps, tanks, and outfits.	Leasing oil tanks, pumps, and devices for a nominal consideration, based on exclusive or tying contracts or dealings in violation of sections 5 and 3 of the Federal Trade Commission and Clayton Acts, respectively.	Answer and trial.	No reasons assigned.
23	315	The Kentucky Independent Oil Co.	.....do.....	.....do.....	.....do.....	Do.
Nov. 19	592	Mebane Iron Bed Co., Inc.	Mattresses and bed-springs.	Simulation of competitor's name.....	.....do.....	Do.
26	280	Prest-O-Lite Co., Inc.	Acetylene and steel containers therefor.	Extracting and keeping deposits for respondent's containers under such conditions as to enable it to obtain a virtual monopoly in the sale of the gas.	.....do.....	Dismissed without prejudice to Commission's right to issue another complaint with respect to the same subject matter and directed to such respondents as the Commission may elect. No reasons assigned.
Dec. 3	126	Ironite Co., Master Builders' Co., and United Products Co.	Cement and concrete hardeners.	Misrepresenting consent decree secured by two of the respondents; threats, not made in good faith, to sue for alleged violation of respondent's patent; misrepresenting the extent of said patent; false and disparaging statements regarding certain competitors; and resale price maintenance.	.....do.....	Relief which would be afforded by an order to cease and desist already secured through a court decree.
3	612	The Great Western Oil Co.	Petroleum and petroleum products.	False and misleading advertising.....	.....do.....	Public interest does not warrant further proceedings in view of the fact that respondent ceased the practice charged prior to the issuance of the complaint and there is no apparent purpose on its part to continue the use of same.
4	548	Vacuum Oil Co.....	.....do.....	System of cumulative rebates or discounts calculated to cause dealers to confine their purchases largely or exclusively to respondent's products; offer of additional discounts to automotive manufacturers conditioned on their recommending, either in their instruction books or on the plates attached to their machines, use of respondent's lubricating oils for their products.	.....do.....	Dismissed without prejudice; no reasons assigned.
4	564	Turner & Harrison Pen Manufacturing Co., Inc.	Pen points.....	Misbranding.....	Answer.....	Practices in question ceased prior to the issuance of the complaint.
4	565	C. Howard Hunt Pen Co.	.....do.....	.....do.....	.....do.....	Do.

9	335	Louis Blaustein, doing business as American Oil Co.	Petroleum and oil pumps, tanks, and outfits.	Leasing oil tanks, pumps, and devices for a nominal consideration based on exclusive or tying contracts or dealings in violation of secs. 5 and 3 of the Federal Trade Commission and the Clayton Acts, respectively.	Answer and trial.	No reasons assigned.
21	537	Shibakawa & Co., Inc.	Safety matches.....	Misbranding.....	Answer.....	Want of sufficient proof.
30	224	National Bridge Co., Daniel B. Luten, Frank H. Drury.	Designs and working plans for bridge construction.	Misrepresenting extent and validity of respondent's patents; misrepresenting effect of consent decrees secured; and making threats, not in good faith, to sue for alleged infringement unless a royalty should be paid; all to force bridge builders to pay large sums in royalties for alleged infringement.	.....do.....	Relief granted in the courts.
Dec. 30	341	W. A. Case & Son Manufacturing Co., Inc.	Water-closet tanks....	Misbranding.....	Answer and trial.	Failure of proof.
1921						
Jan. 10	310	Oklahoma Producing & Refining Corporation of America.	Petroleum and oil pumps, tanks, and outfits.	Leasing oil tanks, pumps, and devices for a nominal consideration based on exclusive or tying contracts or dealings in violation of secs. 5 and 3 of the Federal Trade Commission and the Clayton Acts, respectively.	.....do.....	Dismissed without prejudice to the institution by the Commission of another proceeding against the respondent covering the same subject matter. No reasons assigned.
28	653	Gulf Machine Works.	Materials, repair parts, machinery and equipment for repairing ships.	Commercial bribery.....	Answer.....	Respondent has sold and discontinued its business and does not intend again to engage therein.
Feb. 1	376	Max Fuchs Co.....	Sponges.....	Adulteration.....	.....do.....	Respondent dissolved and has, by operation of law, ceased to exist. No reasons assigned.
1	378	Meyer Bros. Drug Co.	.....do.....	.....do.....	Answer and trial.	
1	388	John E. Leousi and Abram M. Clonney, copartners, doing business under the firm name and style of Leousi, Clonney & Co.	.....do.....	.....do.....	Answer.....	Dismissed without prejudice to the Commission's right to issue another complaint directed against the same or other respondents with respect to the same or other subject matter; respondents have sold out the business involved and do not intend to enter same again.
Apr. 15	714	Brothers Law Co.....	Groceries.....	False and misleading advertising.....	.....do.....	Dismissed without prejudice; respondent gone out of business.
30	251	American Sheet & Tin Plate Co.	Sheet tin.....	Price discrimination in violation of sec. 2 of the Clayton Act.	Answer.....	No reasons assigned.
June 7	590	Bankers Petroleum & Refining Co.	Capital stock.....	False and misleading advertising and misrepresentation in connection with the sale of oil stock.	Answer and trial.	Failure of proof.
, 11	47	Ward & Mackey Biscuit Co.	.....do.....	False and misleading advertising and misrepresentation in connection with the sale of respondent's stock.	.....do.....	Respondent "has ceased to engage actively in business and has disposed of all its assets." Complaint dismissed without prejudice.
18	494	Super Tread Tire Co..	Automobile tires (re-built).	False and misleading advertising.....	Answer.....	Failure of proof.



APPENDIX I.

ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS, WITH ANNOTATIONS.

FEDERAL TRADE COMMISSION ACT.<sup>1</sup>

[Approved Sept. 26, 1914.]

[PUBLIC—No. 203—63D CONGRESS.]

[H. R. 15613.]

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes.

Sec. 1. CREATION AND ESTABLISHMENT OF THE COMMISSION.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of

Five commissioners. Appointed by President, by and with, etc. Not more than three from same political party.

<sup>1</sup> It should be noted that the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, Ch. 64, 42 Stat., 159, sec. 406 of said Act providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture] except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act, entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved Oct. 15,



**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.** each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

**Chairman to be chosen by commission.** 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.

**Pursuit of other business prohibited.** 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.

**Removal by President.** 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.

**Vacancy not to impair exercise of powers by remaining commissioners.** the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

**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.**

**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 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.

**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 shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

**Appointment of secretary. Salary, \$5,000.** The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

**Other employees. Salaries fixed by Commission.** 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.

1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

The annotations are from decisions handed down before July 1, 1921, on petitions to review orders of the Commission, with the exception of *Nulomoline* and *T. C. Hurst* cases, in which it was sought to restrain the Commission from proceeding under sec. 5, of the *Basic Products* case, a mandamus proceeding instituted at the instance of the Commission to compel the submission of information called for by it under sec. 6; and the *Maynard Coal Co.* case, in which the companies sought to enjoin the Commission from enforcing compliance with requests made under said section, and also with the exception of annotations at the end of the Act bearing in a general way on the question of resale price maintenance.

With respect to the decisions on petitions to review, it should be noted that the cases of *Beech-Nut Packing Co. v. Federal Trade Commission*, 264 Fed. 885; *Curtis Publishing Co. v. Federal Trade Commission*, 270 Fed. 881, and *Winsted Hosiery Co. v. Federal Trade Commission*, 272 Fed. 957, are pending on appeal in the Supreme Court, petitions for certiorari having been granted in said cases.

With respect to the *Basic Products* and *Maynard Coal Co.* cases, involving the requiring of reports by the Commission under sec. 6, under

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.

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.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

the circumstances there concerned, it should be noted with respect to the general question involved, that after decision in the case last referred to (on motion for temporary injunction restraining the Commission from requiring reports under sec. 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 sec. 9, at the request of the Commission, to compel the companies in the two cases to file reports previously demanded under sec. 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 as of June 30, 1921, neither the *Maynard Coal* case, *Claire Furnace* case, nor mandamus proceedings have been heard.

In connection with the history in Congress of the Federal Trade Commission Act, see address of President Wilson delivered at a joint session on Jan. 20, 1914 (Congressional Record, vol. 51, pt. 2, pp. 1962-1964, 63d Cong., 2d sess.); report of Senator Cummins from the Committee on Interstate Commerce on Control of Corporations, Persons, and Firms engaged in Interstate Commerce (Feb. 26, 1913, 62d Cong., 3d sess., Rept. No. 1326); Hearings on Interstate Trade Commission before Committee on Interstate and Foreign Commerce of the House, Jan. 30 to Feb. 16, 1914, 63d Cong., 2d sess.; Interstate Trade, Hearings on Bills relating to Trust Legislation before Senate Committee on Interstate Commerce, 2 vols., 63d Cong., 2d sess.; report of Mr. Covington from the House Committee on Interstate and Foreign Commerce on Interstate Trade Commission (Apr. 14, 1914, 63d Cong., 2d sess., Rept. No. 533); also parts 2

Except for secretary, commissioners' clerks, and such special experts and examiners as Commission may find necessary, all employees part of classified service.

Expenses of commission allowed and paid on presentation of itemized approved vouchers.

Commission may rent suitable offices.

Auditing of accounts.

**Sec. 3. BUREAU OF CORPORATIONS. OFFICE OF THE COMMISSION. PROSECUTION OF INQUIRIES.**

Bureau of Corporations absorbed by Commission.

**SEC. 3.** That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

Clerks, employees, records, papers, property, appropriations, transferred to Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

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and 3 of said report presenting the minority views respectively of Messrs. Stevens and LaFerty; 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. 9180-9190; Mann against, part 15, pp. 14939-14946; 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), 11379-11380, 11447-11458 (part 12), 11523-11539, 12873-12875 (part 13), 12912-12924, 12987-12992, 13045-13052, 14768-14770 (part 15); Hollis for, 11177-11180 (part 11), 12141-12149 (part 12), 12151-12152; Kenyon for, 13155-13160 (part 13); Lewis for, 11302-11307 (part 11), 12924-12933 (part 13); Lippit against, 11111-11112 (part 11), 13210-13219 (part 13); Newlands for, 9930 (part 10), 10376-10378 (part 11), 11081-11101, 11106-11116, 11594-11597 (part 12); Pomerene for, 12870-12873 (part 13), 12993-12996, 13102-13103; Reed against, 11112-11116 (part 11), 11874-11876 (part 12), 12022-12029, 12150-12151, 12539-12551 (part 13), 12933-12939, 13224-13234, 14737-14791 (part 15); Robinson for, 11107 (part 11), 11228-11232; Saulsbury for, 11185, 11591-11594 (part 12); Shields against, 13056-13061 (part 13), 13146-13148; Sutherland against, 11601-11604 (part 12), 12805-12817 (part 13), 12855-12862, 12980-12986, 13055-13056, 13109-13111; Thomas against, 11181-11185 (part 11), 11598-11600 (part

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.

Principal office in Washington, but Commission may meet elsewhere.

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” 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.

“Commerce.”

“Corporation” means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Corporation.”

“Documentary evidence” means all documents, papers, and correspondence in existence at and after the passage of this Act.

“Documentary evidence.”

12), 12862-12869 (part 13), 12978-12980; Townsend against, 11870-11872 (part 12); and Walsh for, 13052-13054 (part 13).

See also Letters from the Interstate Commerce Commission to the chairman of the Committee on Interstate Commerce, submitting certain suggestions to the bill creating an Interstate Trade Commission, the first being a letter from Hon. C. A. Prouty dated Apr. 9, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); letter from the Commissioner of Corporations to the chairman of the Committee on Interstate Commerce, transmitting certain suggestions relative to the bill (H. R. 15613) to create a Federal Trade Commission, first letter dated July 8, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by the Bureau of Corporations, relative to sec. 5 of the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 20, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); brief by George Rublee relative to the court review in the bill (H. R. 15613) to create a Federal Trade Commission, dated Aug. 25, 1914 (printed for the use of the Committee on Interstate Commerce, 63d Cong., 2d sess.); and dissenting opinion of Justice Brandeis in *Federal Trade Commission v. Gratz*, 253 U. S. 421, 429-442. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 570-579, or in 1920 "Acts from which the Commission," etc., p. 98 at pp. 104-113.)

## Sec. 4. DEFINITIONS—Continued.

"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;<sup>1\*</sup> also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

## ANNOTATIONS.

**"CORPORATION" — UNINCORPORATED ASSOCIATION NOT DIRECTLY ENGAGED IN BUSINESS.**

1. " \* \* \* The Harness Manufacturers' Association is a voluntary, unincorporated association and thus without capital stock. It is not itself engaged in business. Petitioner contends that it therefore is not within the Act. \* \* \* The language of the Act affords no support for the thought that individuals, partnerships, and

corporations can escape restraint, under the Act, from combining in the use of unfair methods of competition, merely because they employ as a medium therefor an unincorporated, voluntary association, without capital and not itself engaged in commercial business." *Natl. Harness Mfrs. Ass'n. v. Federal Trade Commission*, Dec. 7, 1920, 268 Fed. 705, 708, 709. (See case in this volume, p. 570 at 575.)

**Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE.<sup>2</sup>**

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 regu-

<sup>1</sup> For text of Sherman Act, see footnote on pp. 483-485.

<sup>2</sup> Jurisdiction of Commission under this section limited by sec. 408 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat., 159. See first paragraph of footnote on p. 439.

late 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 thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its applica-

Commission to issue complaint when unfair method used and to public interest.

To serve same on respondent with notice of hearing.

Respondent to have right to appear and show cause, etc.

Intervention allowed on application and good cause.

Testimony to be reduced to writing and filed.

If method prohibited, Commission to make written report stating findings, and to issue and serve order to cease and desist on respondent.

Modification or setting aside by the Commission of its order.

Disobedience of order. Application to Circuit Court of Appeals by Commission.

Sec. 5. UNFAIR COMPETITION. COMPLAINTS, FINDINGS, AND ORDERS OF COMMISSION. APPEALS. SERVICE—Continued.

tion a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

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

**Action by Court.** Notice to respondent. Decree affirming, modifying, or setting aside Commission's order.

**Commission's findings.** Conclusive if supported by testimony.

**Introduction of additional evidence.** If reasonable grounds for failure to adduce theretofore.

**May be taken before Commission.**

**Commission may make new or modified findings by reason thereof.**

**Judgment and decree subject to review upon certiorari, but otherwise final.**

**Petition by respondent to review order to cease and desist.**

**To be served on Commission.**

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 of Appeals same as on application by Commission, and Commission'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 shall be exclusive.

Jurisdiction of Court 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 judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

Proceedings to have precedence over other cases.

Liability under antitrust acts not affected.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Service of Commission's complaints, orders, and other processes.

Personal; or

At office or place of business; or

By registered mail.

Verified return by person serving, and return post-office receipt, proof of service.

ANNOTATIONS.

- 2, 3. "Unfair methods of competition"—In general.
- In particular cases. (Reference to para. 9-25.)
- Commercial bribery. (Reference to para. 9, 10.)
- Conspiracies or combinations to punish or coerce. (Reference to par. 11.)
- False and misleading advertising. (Reference to para. 12, 13.)

- 2, 3. "Unfair methods of competition"—Continued.
- Free goods as inducement to purchase. (Reference to par. 14.)
- Full line forcing. (Reference to para. 15-21.)
- Misbranding or mislabeling—Quality or composition—Commission jurisdiction. (Reference to par. 62.)



## ANNOTATIONS, SEC. 5—Continued.

- 2, 3. "Unfair methods of competition"—Continued.  
 ——— Nondeception of trade. (Reference to par. 22.)
- 4-6. ——— Monopolistic tendency or element.  
 ——— Passing off—Commission jurisdiction as distinguished from common-law jurisdiction. (Reference to par. 62.)  
 ——— Prices at which goods sold. (Reference to pars. 12, 13.)
7. ——— Public interest.
8. ——— Order based on practice abandoned before complaint issued.  
 ——— Resale price maintenance. (Reference to par. 23.)  
 ——— Tying or exclusive contracts or leases. (Reference to pars. 24, 25.)
9. Practices in particular cases—  
 Commercial bribery—Gratuities.
10. ——— Money and gratuities.
11. ——— Conspiracies or combinations to punish or coerce objectionable competitors.  
 ——— False and misleading advertising—Disparaging or misrepresenting competitors' prices and/or products. (Reference to par. 12.)  
 ——— Misrepresenting methods used. (Reference to par. 12.)
- 12, 13. ——— Misrepresenting prices.  
 ——— Misbranding or mislabeling. (Reference to par. 22.)
14. ——— Free goods as inducement to purchase.
- 15-21. ——— Full line forcing.
22. ——— Misbranding or mislabeling—Quality or composition—Nondeception of trade.
23. ——— Resale price maintenance.
- 24, 25. ——— Tying or exclusive contracts or leases.  
 Constitutionality—As attempting to regulate intra as well as inter state commerce. (Reference to pars. 28, 29.)
- 26-32. ——— As combining or delegating legislative, executive, and judicial powers.  
 ——— As violating due process and just compensation provisions. (Reference to pars. 26-32.)
33. ——— Indefiniteness.
34. Damages.
- 35-37. Injunctions to restrain Commission from proceeding—District courts.
38. ——— Interlocutory orders.
39. Interstate commerce—Contracts of domestic concerns receiving subject matter through interstate commerce.
- 40-41. ——— Sales initiated and consummated intrastate by foreign concern.
42. ——— Trade associations.
43. ——— Unfair methods directly affecting.
44. Judicial review—In general.
- 45-48. ——— Court's powers.
49. ——— Effect of court decision passing on practice in private litigation.
50. ——— Substantial doubt.
51. ——— Tendencies of practices.
- 52-55. Pleading.
- 56-63. Scope in general.
- 64-66. "That the findings of fact, if supported by testimony, shall be conclusive."
67. Unincorporated voluntary association not directly engaged in business—Proceeding against.

"UNFAIR METHODS OF COMPETITION"—IN GENERAL.

See also *post*, pars. 43-51, 56-63.

2. "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 Fed-*

*eral Trade Commission v. Gratz*, June 7, 1920, 253 U. S., 421, 427, 40 Sup. Ct. 572, 575. (See case also in Vol. II of Commission's Decisions, p. 564 at p. 569, or in 1920 "Acts from which the Commission," etc., p. 98 at p. 103.)

3. "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 also in Vol. II of Commission's Decisions, p. 565 at pp. 575, 577, or in 1920 "Acts from which the Commission," etc., p. 98 at pp. 109, 111.)

— IN PARTICULAR CASES.

See *post*, pars. 9-25.

— COMMERCIAL BRIBERY.

See *post*, pars. 9-10.

— CONSPIRACIES OR COMBINATIONS TO PUNISH OR COERCE.

See *post*, par. 11.

— FALSE AND MISLEADING ADVERTISING.

See *post*, pars. 12, 13.

— FREE GOODS AS INDUCEMENTS TO PURCHASE.

See *post*, par. 14.

— FULL LINE FORCING.

See *post*, pars. 15-21.

— MISBRANDING OR MISLABELING—QUALITY OR COMPOSITION—COMMISSION JURISDICTION.

See *post*, par. 63.

— NONDECEPTION OF TRADE.

See *post*, par. 22.

— MONOPOLISTIC TENDENCY OR ELEMENT.

4. " \* \* \* freedom of access to the consumer, and the entire absence of monopoly and nondeprivation of the public, have been regarded as an important element in the decision of cases of alleged unfair business competition. \* \* \* " *Curtis Publishing Company v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 914. (See case in this volume, p. 579 at p. 616.)

## ANNOTATIONS, SEC. 5—Continued.

"UNFAIR METHODS OF COMPETITION"—MONOPOLISTIC TENDENCY OR ELEMENT—Continued.

(See case in this volume, p. 622 at pp. 626, 627.)

5. "The Commission justifies the order complained of by looking to the future rather than at the present, \* \* \*."

"The Commission looking forward sees in the present highly competitive business of the various wholesalers a seed which will in time produce the fruit condemned in *Patterson v. United States*, 222 Fed. 599, \* \* \*."

6. It may be admitted that one function of the Trade Commission is to discern and suppress such practices in their beginning; but a thing exists from its beginning, and it is not a conclusion of law from any facts here found that a system [referring to petitioner's system condemned by the Commission of leasing oil tanks and pumps for a nominal rental in consideration of the lessee using lessor's product exclusively in connection therewith], which at present is keenly competitive, extremely advantageous to the public, and, in the opinion of a majority of the competent witnesses economical, is at present unfair to anyone or unfair because tending to monopoly. A tendency is an inference from proven facts, and an inference from the facts as found by the Commission is a question of law for the court. As a matter of law there is at present no violation of the Trade Commission statute; therefore the first of respondent's contentions can not be sustained. *Standard Oil Co. of New York v. Federal Trade Commission*, May 11, 1921, 273 Fed. 478, 481, 482.

— PASSING OFF—COMMISSION JURISDICTION AS DISTINGUISHED FROM COMMON-LAW JURISDICTION.

See *post*, par. 63.

— PRICES AT WHICH GOODS SOLD.

See *post*, paras. 12, 13.

— PUBLIC INTEREST.

See also *post*, paras. 56-63.

7. "The Commission is not made a censor of commercial morals generally. Its authority is to inquire into unfair methods of competition in interstate and foreign commerce, if so doing will be of interest to the public; and if such method of competition is prohibited by the act, to issue an order requiring the person or corporation using it to cease and desist from doing so. We have heretofore so understood the extent of the Commission's authority in *Federal Trade Commission v. Gratz*, 258 Fed. Rep. 314; affirmed 253 U. S. 421, and *New Jersey Asbestos Co. v. Federal Trade Commission*, 264 Fed. Rep. 509." *Winsted Hosiery Co. v. Federal Trade Commission*, April 13, 1921, 272 Fed. 957, 960. (See case in this volume, p. 618 at p. 621.)

— ORDER BASED ON PRACTICE ABANDONED BEFORE COMPLAINT ISSUED.

8. "Petitioner insists that the injunctive 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 petitioners'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 also in Vol. II of Commission's Decisions, p. 536 at p. 540, or in 1920 "Acts from which the Commission," etc., p. 70 at p. 74.)

— RESALE PRICE MAINTENANCE.

See *post*, par. 23.

— TYING OR EXCLUSIVE CONTRACTS OR LEASES.

See *post*, paras. 24, 25.

PRACTICES IN PARTICULAR CASES—  
COMMERCIAL BRIBERY—GRATUITIES.

9. 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 un-

fair 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. 472 on the basis of the decision of the lower court in the Gratz case (see case also in Vol. II of Commission's Decisions, at pp. 545-549, or in 1920 "Acts from which the Commission," etc., pp. 79-83) that the matter was one not so affecting the public as to be within the jurisdiction of the Commission. (See case also in Vol. II of Commission's Decisions, at pp. 553-556, or in 1920 "Acts from which the Commission," etc., pp. 87-90.)

— MONEY AND GRATUITIES.

10. *Held* in *T. C. Hurst & Son v. Federal Trade Commission*, October 2, 1920, 268 Fed. 874, on petition to enjoin the Commission from proceeding against petitioner under its complaint in which it charged

## ANNOTATIONS, SEC. 5—Continued.

**PRACTICES IN PARTICULAR CASES—  
COMMERCIAL BRIBERY—MONEY  
AND GRATUITIES—Continued.**

said petitioner, a ship chandler, with giving captains and other employees of vessels, "without the knowledge and consent of the owners thereof, sums of money and other gratuities, as an inducement to influence such employees or owners to purchase supplies from the respondents, the complainants herein, which said acts were charged to be unfair methods of competition in commerce, within the intent and meaning of section 5, that the Commission acted entirely within its rights, of and concerning a matter liable to injuriously affect commerce." (See case in this volume, p. 565, and 3 F. T. C. 223 for Commission's findings and order.)

**— CONSPIRACIES OR COMBINATIONS TO PUNISH OR COERCE  
OBJECTIONABLE COMPETITORS.**

11. Where it appeared among other things that one of the objects of the Harness Manufacturers' Association, as stated in its constitution and by-laws, is "to protect the harness dealers from the unjust sale of goods by wholesale dealers direct to consumers; that the officers, committees, and members of the Harness Manufacturers' Association and of the Saddlery Association had actively cooperated to establish the principle that a combined and closely affiliated wholesale and retail business was not a legitimate wholesale business; that the secretary of the Saddlery Association had attempted to prevent accessory manufacturers from recognizing, as legitimate jobbers, wholesalers whose names were furnished by

the Harness Manufacturers' Association to the Saddlery Association, as complained of by retailers, for competing with them; \* \* \* that the Harness Manufacturers' Association had used its influence with the Saddlery Association to prevent the admission of specific concerns to membership in the latter association and the recognition of such concerns as legitimate jobbers; \* \* \* that the Harness Manufacturers' Association had requested and secured the cooperation of members of the Saddlery Association in a refusal to sell mail-order houses, hardware stores, general stores, and other competitors of retail harness manufacturers not recognized by the Harness Manufacturers' Association as legitimate; that the latter had refused the privilege of associate membership to accessory manufacturers and jobbers who sell to mail-order houses, establishing, however, an associate membership restricted to manufacturers and jobbers who do not sell to consumers and to mail-order houses, and who are otherwise in harmony with the policy of the association, and issuing credentials thereof to the travelling salesmen of associate members and urging and encouraging the affiliated retailers to withdraw and withhold patronage from concerns whose salesmen were not so equipped; and have induced the members of the Saddlery Association to use their influence with the accessory manufacturers not to sell mail-order houses; \* \* \* that by reason of refusals of accessory manufacturers, due to objections of the Saddlery Association,

tion, to recognize as jobbers certain competitors of members of that association, such competitors have been forced to buy from the Saddlery Association at prices higher than charged by manufacturers to recognized jobbers, [and] \* \* \* that as a result of the opposition of the Harness Manufacturers' Association to sales by manufacturers and jobbers to the classes of competitors before mentioned, the latter had been prevented from purchasing as freely in interstate commerce as they would have been without such opposition. \* \* \*": *Held*, That the Commission's findings of fact, and the existence of the combinations, schemes, and practices directed to be discontinued are amply sustained, and that the findings of fact being so supported, the Commission's order (see 1 F. T. C. 335, 362) is "fully justified by the authorities to which attention has already been called, including especially *Eastern States Lumber Co. v. United States*." [234 U. S. 600.] *Natl Harness Mfrs. Ass'n v. Federal Trade Commission*, December 7, 1920, 268 Fed. 705. (See case in this volume, p. 570 at pp. 576-578.)

— FALSE AND MISLEADING ADVERTISING—DISPARAGING OR MISREPRESENTING COMPETITORS' PRICES AND/OR PRODUCTS.

See *post*, par. 12.

— MISREPRESENTING METHODS USED.

See *post*, par. 12.

— MISREPRESENTING PRICES.

12. Where it appeared that for more than two years petitioner had falsely and misleadingly advertised that it, "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; [and] \* \* \* is selling its sugar at a price much lower than that of its competitors \* \* \* thereby imputing to its competitors the purpose of charging more than a fair price for their sugar;" the fact being that it was "selling certain of its merchandise at less than cost on the condition that the customer simultaneously purchase other merchandise at prices which give \* \* \* a profit on the transaction, without letting the customer know the facts;" and had been "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": *Held*, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition, and that the Commission's order should be sustained with the exception of the second paragraph, in which the petitioner is required to cease selling sugar below cost, the court stating on this point:

13. " \* \* \* 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

## ANNOTATIONS, SEC. 5—Continued.

**PRACTICES IN PARTICULAR CASES—  
FALSE AND MISLEADING ADVERTISING—  
MISREPRESENTING PRICES—  
Continued.**

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 also in Vol. II of Commission's Decisions, p. 538 at p. 542, or in 1920 "Acts from which the Commission," etc., p. 70 at p. 76.)

——— **MISBRANDING OR MISLABELING.**

See *post*, par. 22.

——— **FREE GOODS AS INDUCEMENT TO PURCHASE.**

14. 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. 39, 40. (See case also in Vol. II of Commission's Decisions, at pp. 550-552, or in 1920 "Acts from which the Commission," etc., at pp. 84-86.)

——— **FULL LINE FORCING.**

15. "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 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 also in Vol. II of Commission's Decisions, p. 545 at pp. 548, 549, or in 1920 "Acts from which the Commission," etc., p. 79 at pp. 82, 83.)

16. "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.

17. "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.*, March 1, 1920, 252 U. S. 85.

18. "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 also in Vol. II of Commission's Decisions, p. 564 at p. 570, or in 1920 "Acts from which the Commission," etc., p. 98 at p. 104.)

Brandeis, J., dissenting, at pp. 438-441. (See case also in Vol. II of Commission's Decisions, p. 564 at pp. 576-578, or in 1920

"Acts From Which the Commission," etc., p. 98 at pp. 110-112.)

19. "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. \* \* \*

20. "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 tie 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



## ANNOTATIONS, SEC. 5—Continued.

PRACTICES IN PARTICULAR CASES—  
FULL LINE FORCING—Continued.

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.

21. "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."

— MISBRANDING OR MISLABELING—QUALITY OR COMPOSITION—  
NONDECEPTION OF TRADE.

22. Where a corporation engaged in the manufacture and sale of knit underwear, in competition with manufacturers and importers of underwear composed wholly of wool, and also with manufacturers and importers of underwear composed partly of cotton, who either correctly branded and labeled their underwear with reference to composition or failed to brand and label the same at all in that respect; branded, labeled, advertised and sold certain lines of its

underwear not composed wholly of wool, but the fabric of which, due to its manufacture from "wool-spun" yarns composed of cotton and wool, was soft and woolly, as "Men's Natural Merino Shirts," "Men's Gray Wool Shirts," "Men's Natural Worsted Shirts," "Australian Wool Shirts," and "Men's Natural Wool Shirts," and thereby misled a substantial part of the purchasing public into believing that such goods were all wool, and also tended to encourage and aid representations to consumers to that effect by ignorant or unscrupulous retailers and sales people; but where, in the opinion of the court, "the labels were thoroughly established and understood in the trade. There was no passing off of the petitioner's goods for those of another manufacturer. There was no combination in restraint of trade nor any attempt to establish a monopoly." *Held*, That such misbranding and mislabeling, under the circumstances set forth, did not constitute an unfair method of competition. *Winsted Hosiery Co. v. Federal Trade Commission*, April 13, 1921, 272 Fed. 957. (Reversing Commission's order in 2 F. T. C. 202 and 3 F. T. C. 189. See case in this volume, p. 618 at p. 621.)

## — RESALE PRICE MAINTENANCE.

See also *post*, pars. 83-90.

23. 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*, February 28, 1920, 264 Fed. 885 (see case also in Vol. II of Commission's Decisions, pp. 556-564, or in 1920 "Acts from which the Commission," etc., pp. 90-98), 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.<sup>8</sup>

— TYING AND EXCLUSIVE CONTRACTS OR LEASES.

24. 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 chan-

nels for the distribution and sale of their periodicals; but where, in the opinion of the court, "the case did not turn on this restricted phase which, in our judgment, totally ignores the real situation, and makes no finding on those facts which are really determinative of the question whether the competition of the Curtis Company was unfair business competition. That real situation, as we have seen from the uncontradicted proof, among other features, consists of, first, the creation, through years, with great effort and large expense, of the Curtis Company's schoolboy selling organization; second, that the district distributing agents constitute the control, morale, recruiting, and existence of the schoolboy selling organization; third, the efforts of two competitors to appropriate that selling agency to themselves, with the undisputed consequence of undermining its morale and destroying its efficiency; and, lastly, that the purpose of the Curtis Company in putting in its contract the clauses objected to was not to interfere with commerce or with the circulation of the 400 magazines, but solely to thwart the unfair plan of 2 unfair competitors, who sought to undermine the undivided loyalty of the Curtis distributing district agents, and through them disrupting the Curtis schoolboy organizations," the court further finding that the corporation, "in building up this boy selling organization through the distributing district agents, was not throttling or indeed dealing with the ordinary channels of commerce, but was enlarging

<sup>8</sup> But see *United States v. Schrader's Son, Inc.*, Mar. 1, 1920, 252 U. S. 85, distinguishing *Colgate* case from *Dr. Miles' Medical Co.* case.

## ANNOTATIONS, SEC. 5—Continued.

**PRACTICES IN PARTICULAR CASES—  
TYING AND EXCLUSIVE CONTRACTS  
OR LEASES—Continued.**

the sphere of commerce by enlisting in its service the selling power of schoolboys, who, but for this organization, would not only not have taken part in present commerce, but who would have missed the commercial training the Curtis Company alone gave them for future commerce," and that "there is no proof in this record that any harm has been done in the past by the business methods followed by the Curtis Company, nor is there any proof that commerce has been in any way throttled thereby." *Held*, That the use of such contracts, under the circumstances set forth, did not constitute an unfair method of competition. *Curtis Publishing Co. v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 911, 912, 914, (Reversing Commission's order in 2. F. T. C. 20. See case in this volume, p. 579 at pp. 613, 614, 615, 617.)

25. 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; but where, in the opinion of the court, competition between the distributors or loaners was very keen, the practice was extremely advantageous to the public, and was regarded by many distributors as a profitable form of advertising and of keeping before the consuming public their trade-mark, borne by the equipment leased or loaned by them, the court observing in this connection that the distribution of another manufacturer's product therefrom would be dishonest: *Held*, That the use of such leases, under the circumstances set forth, did not constitute an unfair method of competition. *Standard Oil Co. of New York v. Federal Trade Commission*, May 11, 1921, 273 Fed. 478. (For order similar to that reversed, see 2 F. T. C. 346 at 356. See case in this volume, p. 622 at pp. 625-627.)

**CONSTITUTIONALITY—AS ATTEMPTING TO REGULATE INTRA AS WELL AS INTERSTATE COMMERCE.**

See *post*, pars. 23, 29.

**—AS COMBINING OR DELEGATING LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS.**

26. "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.]

27. "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 29, 1919, 253 Fed. 307, 311. (See case also in Vol. II of Commis-

sion's Decisions, p. 536 at p. 542, or in 1920 "Acts from which the Commission," etc., p. 70 at p. 76.)

28. "The complainants aver that sections 5, 6, 9, and 10 of the act creating the Commission are unconstitutional and void, (a) because beyond the powers vested in Congress by the Constitution; (b) because they delegate to the Commission legislative authority, in violation of Articles I and III and Amendment X of the Constitution; (c) because the Commission is empowered to define and determine what shall constitute 'unfair method of competition in commerce'; (d) because the act attempts to regulate intra as well as inter state commerce; and (e) because the order and proceedings sought to be enjoined discriminates between persons engaged in the same line of business and takes away the property of one without due process of law and without just compensation in violation of the fifth, sixth, ninth, and tenth amendments of the Constitution without molesting the other, and for other alleged grievances more particularly and specifically set up in the bill of the complainants."

29. "The contention that the act of Congress is unconstitutional for any of the reasons specified is without merit, as it is manifestly within the power of Congress to legislate generally in respect to the burdens that may or may not be imposed upon foreign and interstate commerce, and it is also within its power to declare what would be fair and what unfair methods and dealings in relation thereto, and how the same should be ascertained and determined. The Commission is given full

## ANNOTATIONS, SEC. 5—Continued.

**CONSTITUTIONALITY—AS COMBINING OR DELEGATING LEGISLATIVE, EXECUTIVE, AND JUDICIAL POWERS—Continued.**

power and authority to investigate, make findings of fact, and render its judgment and order in relation thereto, and before the same is carried into effect the judgment of the circuit court of appeals, the second highest court under the Government, is to be sought by the Commission to enforce its order, and any party required by such order to cease and desist from using such method of competition may obtain a review of such order in the circuit court of appeals by filing its written petition praying therefor. \* \* \* " *T. C. Hurst & Son v. Federal Trade Commission*, October 2, 1920, 268 Fed. 874, 875-877. (See case in this volume, p. 565 at pp. 567, 569.)

30. "The constitutionality of the act is assailed, first, as assuming 'to combine legislative, executive, and judicial powers and functions and to confer them upon one and the same administrative body, contrary to Articles I, II, and III of the Constitution, and because it assumes to authorize the Commission, which is ostensibly an administrative body, to deprive persons of their property without due process of law, contrary to the fifth amendment of the Constitution.'

31. "This proposition is to our minds without merit. Congress plainly has power to declare unfair methods of competition unlawful and to require that their practice cease. This Congress has done by the act in question. It with equal clearness has the power to authorize an administrative commission to determine

(a) the question what methods of competition the given trader employs, and (b) provisionally, the mixed question of law and fact whether such methods are unfair. These questions being determined against the trader, the administrative requirement to cease and desist, prescribed by Congress, follows, as a matter of course, but only provisionally. The Commission's determination of these questions is not final. Not only does the statute give a right of review thereon upon application by an aggrieved trader to a circuit court of appeals of the United States, but the Commission's order is not enforceable by the Commission but only by order of court. [Citing *Federal Trade Commission v. Gratz*, 253 U. S. 421.]

32. "Throughout the proceedings, not only before the Commission but before the court, the trader is given the right and opportunity to be heard. The act delegates to the Commission no judicial powers, nor does it, in our opinion, confer invalid executive or administrative authority. [Citing cases.] The criticism that the statute makes the Commission both judge and prosecutor is too unsubstantial to justify discussion. The constitutionality of the act, against objections similar to those presented here, has recently been sustained by the Circuit Court of Appeals of the Seventh Circuit in a considered and persuasive opinion. *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307. [See case also in Vol. II of Commission's Decisions, at p. 536, or in 1920 "Acts from which the Commission," etc., at p. 70.] None of the petitioner's citations contain, in our opinion, anything

necessarily opposed thereto. \* \* \* " *Nat'l. Harness Mfr's. Ass'n. v. Federal Trade Commission*, December 7, 1920, 268 Fed. 705, 707. (See case in this volume, p. 570 at pp. 573, 574.)

— AS VIOLATING DUE PROCESS AND JUST COMPENSATION PROVISIONS.

See *ante*, pars. 26-32.

— INDEFINITENESS.

33. "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 also in Vol. II of Commission's Decisions, p. 536 at p. 541, or in 1920 "Acts from which the Commission," etc., p. 70 at p. 75.)

DAMAGES.

34. "In view of what has appeared, the criticism of lack of public injury is without force. The suggestion that no damage has been shown, even if true in fact, is answered by the consideration that the remedy afforded by the statute is preventive, not compensatory." *National Harness Mfrs. Ass'n. v. Federal Trade Commission*, December 7, 1920, 268 Fed. 705, 712. (See case in this volume, p. 570 at p. 579.)

INJUNCTIONS TO RESTRAIN COMMISSION FROM PROCEEDING—DISTRICT COURTS.

35. Held in *T. O. Hurst & Son v. Federal Trade Commission*, October 2, 1920, 268 Fed. 874, that the district court would not restrain the Commission from proceeding against the petitioner in said case and the respondent in a proceeding before it, in which it had charged said respondent with a violation of section 5, on the alleged grounds that the Act was unconstitutional.

The court stated in part (see p. 873 of the report and this volume, p. 565 at pp. 569, 570):

36. " \* \* \* The jurisdiction of the circuit court of appeals to enforce, set aside, or modify orders of the Commis-

## ANNOTATIONS, SEC. 5—Continued.

**INJUNCTIONS TO RESTRAIN COMMISSION FROM PROCEEDING—DISTRICT COURTS—Continued.**

sion is exclusive. In all of the proceedings, whether before the Commission or the court, the amplest provision is made for notice to and full hearing of all parties interested, and for this court, for any of the reasons urged, to anticipate by injunction the action of the Commission and the judgment of the court charged under the law with the review thereof, would be clearly an usurpation of authority.

37. " \* \* \* While undoubtedly the relief sought may sometimes be afforded by injunction, still it does not seem to the court the proper remedy here, where the enforcement of the order sought to be enjoined is exclusively within the jurisdiction of the circuit court of appeals. *Wilson v. Lambert*, 168 U. S. 611, 618. From this court's action, as well in refusing as granting an injunction (Judicial Code, sec. 129), an appeal lies direct to that court, and it, or a judge thereof, would doubtless stay proceedings sought to be enjoined, where the appeal was from an order refusing an injunction, if in the judgment of the court such action should be necessary to meet the ends of justice."

## — INTERLOCUTORY ORDERS.

38. In complaint No. 29, *Federal Trade Commission v. The Nulomoline Co.* (see 1 F. T. C. 400), the United States Circuit Court of Appeals of the Second Circuit, sitting in New York City, refused on August 16, 1918 (see memorandum decision in 254 Fed. 988), to interfere with

the Commission in the taking of testimony. Respondent had 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.

**INTERSTATE COMMERCE<sup>4</sup>—CONTRACTS OF DOMESTIC CONCERNS RECEIVING SUBJECT MATTER THROUGH INTERSTATE COMMERCE.**

39. "Federal Trade Commission and Clayton Acts have no application to a contract between a domestic oil company and a domestic partnership engaged in the garage business," under the terms of which the oil company lent the partnership a gasoline pump in consideration, among other things, of the latter agreeing not to use said pump for any other product than the lender's, "claimed by the garage partners, when sued under it, to have been against public policy and in restraint of trade, though the gasoline involved was brought to plaintiff oil company's place of business by interstate commerce." (Quotation from syllabus.) *Quincy Oil Co. v. Sylvester*, March 7, 1921, 130 N. E. 217 (Mass.).

## — SALES INITIATED AND CONSUMED INTRASTATE BY FOREIGN CONCERN.

40. 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

<sup>4</sup>On interstate commerce, see also annotations to Clayton Act, pars. 47-51, pp. 497-499.

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 also in Vol. II of Commission's Decisions at pp. 550-552, or in 1920 "Acts from which the Commission," etc., at pp. 84-86), reversing Commission's order in 1 F. T. C. 388.

The court stated at page 331 (see Vol. II of Commission's Decisions, p. 551, or 1920 "Acts from which the Commission," etc., at p. 85):

41. "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."

#### —TRADE ASSOCIATIONS.

42. "The contention that the Harness Manufacturers' Association is not engaged in commerce is answered by the consideration, first, that many of

its members are so engaged, and, second, that interstate commerce is claimed to have been directly affected by the alleged unfair methods of competition. *Loewe v. Lawlor*, *supra* [208 U. S. 274]; *Eastern States Lumber Co. v. United States*, *supra* [234 U. S. 600]; *Nash v. United States*, 229 U. S. 373, 379." *Nat'l Harness Mfrs. Ass'n. v. Federal Trade Commission*, December 7, 1920, 263 Fed. 705, 709. (See case in this volume, p. 570 at pp. 575, 576.)

#### —UNFAIR METHODS DIRECTLY AFFECTING.

43. "The contention that the Harness Manufacturers' Association is not engaged in commerce is answered by the consideration \* \* \* that interstate commerce is claimed to have been directly affected by the alleged unfair methods of competition. *Loewe v. Lawlor*, *supra* [208 U. S. 274]; *Eastern States Lumber Co. v. United States*, *supra* [234 U. S. 600]; *Nash v. United States*, 229 U. S. 373, 379." *Nat'l Harness Mfrs. Ass'n. v. Federal Trade Commission*, December 7, 1920, 263 Fed. 705, 709. (See case in this volume, p. 570 at pp. 575, 576.)

#### JUDICIAL REVIEW—IN GENERAL.

44. "Whatever may be the exact meaning or extreme scope of the still novel phrase "unfair method of competition," it is settled that it is for the courts and not the Commission to determine as matter of law what is and what is not included in the phrase. (*Federal, Etc., Commission v. Gratz*, 253 U. S. 421.) And this rule is not avoided by stating as a finding of fact what is a mere conclusion of law. *New Jersey*,



## ANNOTATIONS, SEC. 5—Continued.

JUDICIAL REVIEW—IN GENERAL—  
Continued.

*Etc., Co. v. Trade Commission*, 264 Fed. 509." *Standard Oil Co. of New York v. Federal Trade Commission*, May 11, 1921, 273 Fed. 478, 481. (See case in this volume, p. 622 at p. 626.)

## — COURT'S POWERS.

45. " \* \* \* while Congress has enacted, \* \* \* 'that unfair methods of competition in commerce are declared unlawful,' it has not defined unfair competition, or specified what shall constitute unfair competition. From this absence of definition, it is reasonable to infer that it was in the mind of Congress that, as unfair competition had long been a subject of judicial scrutiny, determination, and was involved in remedial suits at law for damages and of injunctive suits in equity, to prevent continuance, the definition and ascertainment of what constituted unfair competition was a legal question which the law could determine. Indeed, in the nature of things, it was impossible to describe and define in advance just what constituted unfair competition, and in the final analysis it became a question of law, after the facts were ascertained, whether such facts constitute unfair competition in business, for the test of fairness, as of fraud, is the application by the law of moral standards to the actions of men."

46. "While it was the exclusive right of a jury in a case at law to find the facts in any given case, it still remained the duty of the trial judge, before entering judgment, to decide whether from those facts the in-

jury of unfair competition in business could be lawfully inferred. So, also, when the case was in equity, while it was the province of the judge to find the facts, it also was his duty, and as well the duty of a reviewing court, to decide whether, upon those facts so found, the injury of unfair competition in business existed. Presumably, with this recognized existing jurisdiction of Federal courts over cases of unfair business competition in mind, Congress passed the Trade Commission Act, \* \* \*."

47. "Such, then, being the existing and by the act unchanged jurisdiction of such courts in reference to questions of unfair competition between business competitors generally, and that jurisdiction being exercised on well-established legal principles, it follows that, when Congress invoked an exercise of supervisory power on the part of such courts over the action of the Trade Commission, and enacted that this supervisory power should be exercised before the orders of the Trade Commission could be enforced, it would seem to follow that the supervisory powers which the court was meant and intended to exercise were the usual powers exercised in the usual way by those courts when exercising their power to review, and, while the act provided that the findings of fact made by the Commission were final and conclusive, it still remained the duty of the supervising court to determine the same legal questions which a supervising court had in reviewing actions of the trial court, namely, whether under all the facts found by the Trade Commission a case of un-

fair business competition was established \* \* \*."

48. "To our mind, the situation is wholly different from that of the Interstate Commerce Commission. There the basic question is the fixation of rates, which is a question of business discretion, and in no sense a legal, judicial, or moral one. Manifestly, Congress did not mean to confer upon the Trade Commission the power to grant injunctions in cases of business competition, where courts would not be justified in granting injunctions. Indeed, when Congress, in invoking such reviewing and supervisory power, said 'the court \* \* \* 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,' it was using language which aptly described the customary jurisdiction and power theretofore exercised by circuit courts of appeals in reviewing cases of alleged unfair business competition." *Curtis Publishing Co. v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 908, 909. (See case in this volume, p. 579 at pp. 610-612.)

lations of these parties were under review by the Commission one of the parties invoked, as it had a right to do, the jurisdiction of a court in equity and sought to enjoin such alleged unfair competition, and that court, after hearing, held that the defendant's business operations did not constitute unfair competition, but, on the contrary, the complainant's actions did, and the Trade Commission thereafter, upon similar facts shown to it, held the Curtis Company was guilty of unfair competition in business, the mere existence of such an anomalous and contradictory holding of legal conclusion upon the same general facts in and of itself suggests that, in the exercise of our reviewing, supervisory, jurisdiction, it is for us to decide whether the legal question before the Trade Commission was rightly decided by it, and in deciding that question we may give due consideration to the reasoning and opinion of the court referred to, with a view to avoiding conflicting holdings under substantially similar states of fact." *Curtis Publishing Co. v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 910, 911. (See case in this volume, p. 579 at pp. 612, 613.)

— SUBSTANTIAL DOUBT.

— EFFECT OF COURT DECISION PASSING ON PRACTICE IN PRIVATE LITIGATION.

49. "Of course, the decree in that case [referring to adjudication involving the same private parties and same general subject matter], where private rights only are concerned, binds only the parties, and can in no way affect the jurisdiction of the Trade Commission; but the fact that while the business re-

50. "Injunction is so drastic and prohibitive a remedy, its issuance by a court of equity so carefully safeguarded, that to have substantial question of the wisdom of such issue often suffices to withhold. To doubt is to decide, and this well-founded principle of equity in itself would lead a court of original jurisdiction to deny the strong arm of injunctive relief. \* \* \*"

## ANNOTATIONS, SEC. 5—Continued.

JUDICIAL REVIEW—SUBSTANTIAL  
DOUBT—Continued.

*Curtis Publishing Co. v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 914. (See case in this volume, p. 579 at p. 617.)

## —TENDENCIES OF PRACTICES.

51. " \* \* \* A tendency is an inference from proven facts, and an inference from the facts as found by the Commission is a question of law for the court. \* \* \* " *Standard Oil Co. of New York v. Federal Trade Commission*, May 11, 1921, 273 Fed. 478, 482. (See case in this volume, p. 622 at p. 627.)

## PLEADING.

52. "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.

53. "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.

54. "Nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint.

\* \* \*

55. "The first count of the complaint falls 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 also in Vol. II of Commission's Decisions, p. 564 at pp. 569, 570, or in 1920 "Acts from which the Commission," etc., p. 98 at pp. 103, 104. On same subject see also annotations to Clayton Act, pars. 52-55, p. 499.)

## SCOPE IN GENERAL.

See also *ante*, par. 7.

56. "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 also in Vol. II of Commission's Decisions, p. 536 at p. 541, or in 1920 "Acts from which the Commission," etc., p. 70 at p. 75.)

57. "It seems to use 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."  
\* \* \*

58. "No authority is given to any individual to present his grievances and the Commission

is to interpose only in the interest of the public. \* \* \*

59. "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. [258 Fed. 307. See case also in Vol. II of Commission's Decisions, p. 536, or in 1920 "Acts from which the Commission," etc., at p. 70.] 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 14, 1919, 258 Fed. 314, 316, 317. (See case also in Vol. II of Commission's Decisions, p. 545 at pp. 548, 549, or in 1920 "Acts from which the Commission," etc., p. 79 at pp. 82, 83.)

60. "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.

## ANNOTATIONS, SEC. 5—Continued.

## SCOPE IN GENERAL—Continued.

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 28, 1920, 264 Fed. 885, 890. (See case also in Vol. II of Commission's Decisions, p. 553 at p. 562, or in 1920 "Acts from which the Commission," etc., p. 90 at p. 96.)

61. " \* \* \* 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 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 also in Vol. II of Commission's Decisions, p. 564 at

p. 574, or in 1920 "Acts from which the Commission," etc., p. 98 at p. 108.)

62. "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 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, 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 also in Vol. II of Commission's Decisions, p. 564 at pp. 578, 579, or

in 1920 "Acts from which the Commission," etc., p. 98 at pp. 112, 113.)

63. On appeal from a decision of the district court granting a motion to dismiss a bill filed by manufacturers of linoleum to enjoin defendant from advertising, offering, and selling as linoleum any product not theretofore so known and understood, on the ground that "an action for unfair competition lies only when a property right of the complainant has been invaded, and the fact that a defendant makes an article and sells it under a false name or designation and thus deceives the public does not give a right of action to another, who makes the genuine article so designated, where it is not shown that defendant has represented or sold its product as that of complainant" [quotation from syllabus], the circuit court of appeals in *Armstrong Cork Co. v. Ringwalt Linoleum Works*, April 4, 1917, 240 Fed. 1022, reversed the lower court and remanded the case "with directions to reinstate the bill, overrule the demurrer, without prejudice to raising the same questions on final hearing, and to proceed to final hearing," adding that "in view of the possibility of bringing such matters as are here involved before Federal Trade Commission, this order is made without prejudice to the right of the parties while this bill is pending to apply for relief to that body, if it so desires." (Which was done. See findings and order in 1 F. T. C. 436.)

**"THAT THE FINDINGS OF FACT, IF SUPPORTED BY TESTIMONY, SHALL BE CONCLUSIVE."**

64. " \* \* \* The findings of fact by the Trade Commis-

sion we have quoted in full. Those findings we accept as established, and they are the sole foundation on which the order of the Commission is bot-tomed. 'From the foregoing findings, the Commission con-cludes,' is its own statement."

65. "Now, it is very apparent that, where the supervisory review by the circuit court of appeals, which Congress invoked, provided that that court 'shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript, a decree,' it is the province, and indeed the duty, of the reviewing court, to consider, not merely the findings of the Commission, but the whole record, the whole proofs, and the whole proceeding, and to say, first, whether in view of all the proofs, the limited facts found by the Commission really passed on the pertinent and decisive facts, and so warranted an injunction; and, second, if such limited facts do not reach the merits, and do not alone legally justify and warrant a decree of unfair competition and injunctive relief, then, since Congress has enacted that the circuit courts of appeals 'shall 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,' it is quite clear that it is not only the province, but the duty, of the circuit court of appeals, and indeed the expressed purpose of Congress that such reviewing court should itself examine the pleadings, the entire testimony and proceedings, and upon such inclusive examination determine whether the facts found by the Commission and the proofs on

## ANNOTATIONS, SEC. 5—Continued.

**"THAT THE FINDINGS OF FACT, IF SUPPORTED BY TESTIMONY, SHALL BE CONCLUSIVE"**—Continued.

which the Commission made no findings, and which the court, in the absence of such finding, itself finds and determines, legally established a case of unfair business competition by the Curtis Company."

66. " \* \* \* accepting in their entirety and finality all facts found by the Commission, but taking the whole record and the proofs on which the Commission has made no finding, we are satisfied, as the statute provides, 'upon the pleadings, testimony, and proceedings set forth in the transcript,' the charge of unfair methods of competition could not be legally adjudged. If this was a case where a trial court had submitted these proofs to a jury from which to find a verdict of unfair business competition, a reviewing court would be constrained to set such verdict aside as not having testimony to support it." *Curtis Publishing Co. v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 911, 912, 914, 915. (See case in this volume, p. 579 at pp. 613, 614, 617.)

**UNINCORPORATED VOLUNTARY ASSOCIATION NOT DIRECTLY ENGAGED IN BUSINESS — PROCEEDING AGAINST.**

67. "By section 5 of the Federal Trade Commission Act the Commission is given jurisdiction when it has reason to believe that 'any person, partnership, or corporation has been or is using any unfair methods 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.' Section 4 of the act defines a corporation as 'any company or association, incorporated or unincorporated' which either (a) is organized to carry on business for profit and has shares of capital or capital stock, or (b) is '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.' The Harness Manufacturers' Association is a voluntary, unincorporated association and thus without capital stock. It is not itself engaged in business. Petitioner contends that it therefore is not within the Act. But this contention overlooks the fact that the association is not the only one proceeded against; but that its officers and the members of its executive committee, as well as its membership generally, are included in the proceedings as parties and made subject to the Commission's order. The language of the Act affords no support for the thought that individuals, partnerships, and corporations can escape restraint, under the Act, from combining in the use of unfair methods of competition, merely because they employ as a medium therefor an unincorporated, voluntary association, without capital and not itself engaged in commercial business. The order may be enforced by reaching the officers and members, personally and individually. A voluntary association, having many members, may be brought into court by service on its officers and such of its members as are known and can be conveniently reached, sufficient being served to represent all the diverse interests."

[Citing cases.] *Nat'l Harness* 268 Fed. 705, 708, 709. (See *Mfrs. Ass'n v. Federal Trade Commission*, p. 570 at *Commission*, December 7, 1920, p. 575.)

### Sec. 6. FURTHER POWERS.<sup>1</sup>

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,<sup>2</sup> to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

To investigate, either on own initiative or application of Attorney General, observance of final decree entered under antitrust acts.

To transmit findings and recommendations to Attorney General.

<sup>1</sup> On constitutionality, see also *ante*, pars. 28, 29, p. 459.

Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

<sup>2</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in last paragraph of sec. 4 of this act, see p. 444.



## Sec. 6. FURTHER POWERS—Continued.

To investigate, on direction of 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<sup>54</sup> by any corporation.

To investigate and make recommendations, on application of Attorney General, for readjustment 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<sup>54</sup> 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

To make reports to Congress, together with recommendations for new legislation.

in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

To provide for publication of its reports and decisions.

To classify corporations, and make rules and regulations incidental to administration of Act.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

To investigate foreign trade conditions involving foreign trade of United States, reporting to Congress with recommendations deemed advisable.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

## ANNOTATIONS.

68-71. "Manufacture" or "production" distinguished from commerce — As affecting right to investigate concern under Clause A.

72-79. — As affecting right to demand reports under Clause B.

"MANUFACTURE" OR "PRODUCTION" DISTINGUISHED FROM "COMMERCE"—AS AFFECTING RIGHT TO INVESTIGATE CONCERN UNDER CLAUSE A.<sup>55</sup>

68. 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

<sup>54</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in last paragraph of sec. 4 of this act, see p. 444.

<sup>55</sup> On interstate commerce, see also *ante*, pars. 39-43 (pp. 402, 463), and annotations to Clayton Act, pars. 47-51 (pp. 497-499).

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": *Held*, in *United States v. Basic Products Co.*, September 9, 1919, 260 Fed. 472, that such investigation, under the circumstances involved, was beyond the powers of the Commission.<sup>1</sup>

The court stated, *inter alia* (p. 481):

69. " \* \* \* investigation under subdivision (a), section 6, is limited to corporations engaged in interstate commerce. The defendant is engaged in manufacture.

70. "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:

71. "'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 incident-

tal 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 \* \* \*." (See case in this volume, p. 542 at p. 553.)

—AS AFFECTING RIGHT TO DEMAND REPORTS UNDER CLAUSE B.

72. "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

<sup>1</sup>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 fourth paragraph of footnote to Federal Trade Commission Act on pp. 440, 441.

## ANNOTATIONS, SEC. 6—Continued.

**"MANUFACTURE" OR "PRODUCTION" DISTINGUISHED FROM "COMMERCE"—AS AFFECTING RIGHT TO DEMAND REPORTS UNDER CLAUSE B—Continued.**

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*,<sup>\*</sup> April 19, 1920, Supreme Court of the District of Columbia. (Not reported in Reporter series.)

The court stated, *inter alia*:

73. " \* \* \* 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.'

74. "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.

75. "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. No. 71).]"

76. "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 or 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."

77. "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 \* \* \*."

78. "The corporations referred to in the Act are, by its

<sup>\*</sup> Granting temporary injunction against the Commission. In connection with this case see fourth paragraph of footnote to Federal Trade Commission Act on pp. 440, 441.

terms, limited to those engaged chiefly or wholly to production, 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. control \* \* \*.

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 79. "It follows, therefore, that the Commission can not compel the making of the reports which it has demanded of the plaintiff." (See case in this volume, p. 555 at pp. 558, 563, 564.)

**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,<sup>80</sup> the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

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.

**ANNOTATIONS.**

"THAT IN ANY SUIT \* \* \* THE COURT MAY \* \* \* REFER SAID SUIT TO THE COMMISSION AS A MASTER IN CHANCERY," ETC. such course not considered necessary under the circumstances of the case in *United States v. Eastman Kodak Co.*, August 24, 1915, 226 Fed. 62, 81.

80. Above possibility called to the attention of the court, but

**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 corpo-

To furnish, when directed by President, records, papers, and information, and to detail officials and employees.

\* For text of Sherman Act, see footnote on pp. 483-485. As enumerated in last paragraph of sec. 4 of this act, see p. 444.

\* Provisions and penalties of secs. 6, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

**Sec. 8. COOPERATION OF OTHER DEPARTMENTS AND BUREAUS—Continued.**

ration 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.

**Sec. 9. EVIDENCE. WITNESSES. TESTIMONY. MANDAMUS TO ENFORCE OBEDIENCE TO ACT.\***

Commission to have access to documentary evidence and right to copy same.

**SEC. 9.** That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any members of the

May require attendance of witnesses and production of evidence.

Subpoenas, oaths, affirmations, examination of witnesses. Reception of evidence.

commission may sign subpoenas, 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 subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Disobedience to a subpoena. Commission may invoke aid of any United States court.

In case of contumacy or disobedience of subpoena, 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 subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

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.

\* Provisions and penalties of secs. 6, 8, 9, and 10 of this act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

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. 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.

Commission may order depositions at any stage.

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.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Witness fees, same as paid for like services in United States courts.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Incriminating testimony or evidence no excuse for failure to testify or produce.

But natural person shall not be prosecuted with respect to matters involved.

Perjury excepted.

ANNOTATIONS.

CONSTITUTIONALITY.—AS VIOLATING PROVISION AGAINST UNREASONABLE SEARCHES AND SEIZURES.

called inquisitorial feature of section 9, in the declaration 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 inves-

81. "The Act is also assailed as violating the fourth amendment to the Federal Constitution, which protects against "unreasonable searches and seizures," which petitioner asserts are provided for by the so-

<sup>10</sup> See also *ante*, para. 28, 29, p. 459.

## ANNOTATIONS, SEC. 9—Continued.

CONSTITUTIONALITY—AS VIOLATING  
PROVISION AGAINST UNREASON-  
ABLE SEARCHES AND SEIZURES—  
Continued.

tigated or proceeded against'; a provision whose enforcement is provided for by section 10, which subjects any person to fine or imprisonment, or both, '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.'

82. "Of this criticism it is enough to say that the provisions in question of sections 9 and 10 are not before this court. The

Commission has not attempted to exercise them. Section 9 otherwise contains complete provision for enforcing, by subpoena, the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under investigation. Beyond this the Commission has not gone. That one attacking a statute as unconstitutional must show that the alleged unconstitutional feature injures him is settled by a long line of authorities. [Citing cases.] *Nat'l Harness Mfrs. Ass'n v. Federal Trade Commission*, December 7, 1920, 268 Fed. 705, 708. (See case in this volume, p. 570 at p. 574.)

Sec. 10. PENALTIES.<sup>22</sup>

Failure to testify or to produce documentary evidence. Offender subject to fine or imprisonment, or both.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

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

<sup>22</sup> On constitutionality, as violating provision against unreasonable searches and seizures, see *ante*, pars. 28, 29, p. 459, and par. 81, p. 477.

Provisions and penalties of secs. 8, 8, 9, and 10 of this Act made applicable to the jurisdiction, powers, and duties conferred and imposed upon the Secretary of Agriculture by sec. 402 of the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159.

the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

Willful refusal to submit documentary evidence to Commission.

Offender subject to fine or imprisonment, or both.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Failure of corporation to file required report.

Forfeiture for each day's continued failure.

Recoverable in civil suit in district where corporation has principal office, or does business.

Various district attorneys to prosecute for recovery.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Unauthorized divulgence of information by employee of Commission punishable by fine or imprisonment or both.

#### Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE COMMERCE.

SEC. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts<sup>11a</sup> or the Acts to regu-

Not affected by this act.

<sup>11a</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in last paragraph of sec. 4 of this act, see p. 444.



Sec. 11. ANTITRUST ACTS AND ACT TO REGULATE  
COMMERCE—Continued.

late 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.

ANNOTATIONS TO ACT AS A WHOLE.

83. Resale price maintenance—In general. of them not only expressing no dissent from such plan but actually cooperating in carrying it out by themselves selling at the prices named, you may reasonably find from such fact that there was an agreement forbidden by the Sherman Antitrust Act” was erroneous and material, as the facts recited “do not suffice to establish an agreement or combination forbidden by the Sherman Act.” *Frey & Son v. Cudahy Packing Co.*, April 18, 1921, 255 U. S. —, 41 Sup. Ct. 451.
84. — As an agreement or combination under Sherman Antitrust Act.
85. — Refusal to sell—As price fixing.
- 86-90. — — Right to.

RESALE PRICE MAINTENANCE—IN  
GENERAL.<sup>12</sup>

See also *ante*, par. 23.

83. 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.

—AS AN AGREEMENT OR COMBI-  
NATION UNDER SHERMAN ANTI-  
TRUST ACT.

84. *Held* (three judges dissenting), That a charge by the trial court to the jury in which the court stated to them that “if you shall find that the defendant indicated a sales plan to the wholesalers and jobbers, which plan fixed the price below which the wholesalers and jobbers were not to sell to retailers, and you find the defendant called this particular feature of this plan to their attention on very many occasions, and you find the great majority

— REFUSAL TO SELL<sup>13</sup>—AS PRICE  
FIXING.

85. “ \* \* \* Let it be assumed that the defendant declines business with all who refuse to maintain prices. If such refusal affected a necessity of life, or even a staple article of trade, the matter might be serious, and history might be appealed to for instances of statutory punishment—e. g., the engrossing acts—but mere abstention from dealing can not *per se* be price fixing, because the price is not made to depend upon any contract or agreement even thought by the parties to be enforceable. To call defendant’s acts price fixing is inaccurate and evades obvious

<sup>12</sup> 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.

<sup>13</sup> On refusal to sell as involved in connection with resale price maintenance, see also *post*, annotations to Clayton Act, pars. 4-15, pp. 487-490.

legal questions, viz, whether defendant has the right to decline business, and whether it is anybody's business why the business is declined." *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, July 20, 1915, 224 Fed. 566, 572; affirmed November 10, 1915, 227 Fed. 46.

———— RIGHT TO.

See also *ante*, par. 23.

86. " \* \* \*. Numerous individuals and corporations have been enjoined from restraining the 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.

87. " Using the word 'sell' or 'sale' conceals the issue. If a man prefers to keep what he has, an offer of money to salve the taking thereof does not prevent such taking from being confiscation. The *Cream of Wheat Co.* is purely a private concern except as regulated by its creating law. It is an ordinary merchant whose business is affected by no public use whatever. The statute, as construed by plaintiff, descends upon that private merchant and commands him to make a contract by which he transfers his property for a price but against

his will. The contract and the price are legally mere surplusage: the constitutional violation lies in the compulsion whereby he is deprived of his property for a private purpose. If defendant's actual scheme of interstate business is unlawful, the United States certainly, and now perhaps an individual plaintiff can put it out of business; but neither the Nation nor any individual can take away its property with or without compensation for the private use of anyone." *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, July 20, 1915, 224 Fed. 566, 574, 575.

88. " \* \* \* We had supposed that it was elementary law that the trader could buy from whom he pleased and sell to whom he pleased, and that his selection of seller and buyer was wholly his own concern. 'It is a part of a man's civil rights that he be at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or be the result of whim, caprice, prejudice, or malice.' *Cooley on Torts*, page 278. See, also, our own opinion in *Greater New York Film Co. v. Biograph Co.* 203 Fed. 39, 121, C. C. A. 375.

89. " Before the Sherman Act it was the law that a dealer might reject the offer of a proposing buyer, for any reason that appealed to him; it might be because he did not like the other's business methods, or because he had some personal difference with him, political racial or social. That was purely his own affair with which nobody else had any concern. Neither the Sherman Act, nor any decision of the Supreme Court construing the same, nor

## ANNOTATIONS TO ACT AS A WHOLE—Continued.

RESALE PRICE MAINTENANCE—  
REFUSAL TO SELL—RIGHT TO—  
Continued.

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. 568.

90. "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 Sons 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.

THE CLAYTON ACT.<sup>14</sup>

[Approved Oct. 15, 1914.]

[PUBLIC—No. 212—63D CONGRESS.]

[H. R. 15657.]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

## Sec. 1. DEFINITIONS.

*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

"Antitrust laws."

<sup>14</sup> Annotations cover cases through 278 Fed. 768 (part 3, Advance Sheets, issued as of Sept. 1, 1921), and 41 Sup. Ct. Reporter 625, which disposes of all cases decided at the October term, 1920 (last decisions handed down on June 6 1921). 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. 52), 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 be noted that the cases of *Standard Fashion Co. v. Magrane, Houston Co.*, June 28, 1919, 259 Fed. 793; *United States v. United Shoe Machinery Co.*, Mar. 31, 1920, 264 Fed. 138; *Curtis Publishing Co. v. Federal Trade Commission*, Mar. 2, 1921, 270 Fed. 811, and

the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety<sup>15</sup>; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"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

"Commerce."

*Fruit Growers Express, Inc. v. Federal Trade Commission*, June 16, 1921, 274 Fed. 205, are, as of June 30, 1921, pending on appeal in the Supreme Court.

It should also be noted in connection with this law—

That the so-called Shipping Board Act (sec. 15, ch. 451, 64th Cong., 1st sess.) provides that "every agreement, modification, or cancellation lawful under this section shall be excepted from the provisions of the Act approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' and amendments and acts supplementary thereto \* \* \*";

That the jurisdiction of the Commission is limited by the "Packers and Stockyards Act, 1921," approved Aug. 15, 1921, ch. 64, 42 Stat. 159, sec. 408 of said Act, providing that "on and after the enactment of this Act and so long as it remains in effect the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this Act is made subject to the jurisdiction of the Secretary [of Agriculture], except in cases in which, before the enactment of this Act, complaint has been served under sec. 5 of the Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved Sept. 26, 1914, or under sec. 11 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case"; and

That by the last paragraph of sec. 407 of the Transportation Act, approved Feb. 28, 1920, ch. 91, 41 Stat. 458 at 482, the provisions of the Clayton Act and of all other restraints or prohibitions, State or Federal, are made inapplicable to carriers, in so far as the provisions of the section in question, which relate to division of traffic, acquisition by a carrier of control of other carriers and consolidation of railroad systems or railroads, are concerned.

\* <sup>15</sup>The Sherman Act (26 Stat. 209), which, as a matter of convenience, is printed herewith. While the Act itself has not been amended, appropriations for the fiscal years ending June 30, 1920, 1921, and 1922 (Sundry Civil Appropriation Act, July 19, 1919, ch. 24, 41 Stat. 208, Sundry Civil Appropriation Act, June 5, 1920, ch. 235, 41 Stat. 922,

## Sec. 1. DEFINITIONS—Continued.

any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

"Person or persons."

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

## "COMMERCE."

(pp. 462, 463), and annotations

On interstate commerce, see to this act, pars 47-51 (pp. annotations to Federal Trade 497-499).

Commission Act, pars. 39-43

and Sundry Civil Appropriation Act, Mar. 4, 1921, ch. 161, 41 Stat. 1411, respectively), were made contingent upon no part of the moneys being—

"Spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further*, That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products."

The act, omitting the usual formal "*Be it enacted*," etc., follows:

## CONTRACTS, COMBINATIONS, ETC., IN RESTRAINT OF TRADE ILLEGAL.

SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand 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 per-

**Sec. 2. PRICE DISCRIMINATION.<sup>14</sup>**

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

Unlawful where effect may be to substantially lessen competition or tend to create a monopoly.

son 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 petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

**ADDITIONAL PARTIES.**

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

**FORFEITURE OF PROPERTY.**

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

**SUITS—RECOVERY.**

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared 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.

<sup>14</sup> On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on p. 483.

## Sec. 2. PRICE DISCRIMINATION—Continued.

States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

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.

## ANNOTATIONS.

1. Commission action not prerequisite to private suit.
2. Leases.
3. Refusal to sell chain-store concern as not a wholesaler.
- 4-7. Refusal to sell on account of failure to observe suggested resale prices.
- 8-11. "Restraint of trade"—As involved by or resting on patent, trade name or mark or copyright monopoly, and refusal to sell.
- 12, 13. "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."
- 14, 15. Trade classifications—Wholesaler as distinguished from jobber and retailer.
- 16, 17. "Where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

criminations by defendant against plaintiff in violation of Clayton Act, October 15, 1914, ch. 323, 38 Stat. 730, although the Federal Trade Commission has taken no action in the premises." (Quotation from syllabus.) *Frey & Son, Inc., v. Cudahy Packing Co.*, April 27, 1916, 232 Fed. 640.

## LEASES.

2. "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 CHAIN-STORE CONCERN AS NOT A WHOLESALER.

3. *Held*, In *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, Circuit Court of Appeals, November 10, 1915, 227 Fed. 46, that such a refusal does not constitute a discrimination in price, under the circum-

## COMMISSION ACTION NOT PREREQUISITE TO PRIVATE SUIT.

1. *Held*, That "an action may sometimes be maintained in the Federal district court to recover damages for alleged price dis-

stances set forth, in violation of section 2. (See *post*, pars. 14, 15.)

**REFUSAL TO SELL ON ACCOUNT OF FAILURE TO OBSERVE SUGGESTED RESALE PRICES."**

See also *post*, parts. 8-11, 14-15.

4. "Defendant was engaged in selling, under a trade name, purified wheat middlings, selected by it and put up in packages. Its whole business covered less than 1 per cent of the total middlings bought and sold in the country. It decided to sell only to wholesalers, and so announced to the trade, but for a time made an exception" to a concern operating a line of chain stores selling to the general public at retail. It also announced that it reserved the right to discontinue selling to those failing to observe the prices which it announced, as the prices at which it desired its product to be resold, and, pursuant to such announcement, discontinued selling to plaintiff, the concern above referred to. (Quotation from syllabus.)

5. "It is urged that defendant's professed and published scheme of sales, plus its practice thereunder, creates an actual monopoly of, and do lessen competition in, Cream of Wheat; that this result is in itself unlawful and is produced by means which are specifically prohibited by section 2 of the Clayton Act, namely, price discrimination not justified by any of the exceptions of that section, \* \* \*."

6. "Plaintiff's syllogisms in support of the demand for relief are simple, thus: (1) De-

fendant has a monopoly in Cream of Wheat; (2) through such monopoly it fixes the resale price of that article; therefore, (3) it prevents competition in Cream of Wheat and violates the body of section 2. Again: (1) Preventing competition is restraint of trade; (2) defendant does prevent competition; therefore (3) it restrains trade and is not within the exception of section 2. \* \* \*"

7. *Held*, That defendant's course of conduct under the circumstances set forth does not constitute an unreasonable restraint of trade nor price discrimination the effect of which "may be to substantially lessen competition or tend to create a monopoly" so as to entitle plaintiff to relief under sec. 2. *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.* July 20, 1915, 224 Fed. 566, 571, 572; affirmed Nov. 10, 1915, 227 Fed. 46.

**"RESTRAINT OF TRADE"—AS INVOLVED BY OR RESTING ON PATENT, TRADE NAME OR MARK, OR COPYRIGHT MONOPOLY, AND REFUSAL TO SELL.**

See also *ante*, pars. 4-7; *post*, pars. 58-63, 112.

8. \* \* \* "It is true that defendant has a monopoly on Cream of Wheat; but as heretofore stated, it is a lawful monopoly, ultimately resting on the plain truth that there can be nothing anywhere in the United States lawfully called Cream of Wheat without defendant's consent and approbation. In that substance (if legally it is a distinct substance) defendant has

"On resale price maintenance in general, and refusal to sell in connection therewith, see also annotations to Federal Trade Commission Act. *ante*, pars. 83-90, pp. 480-482.



## ANNOTATIONS, SEC. 2—Continued.

"RESTRAINT OF TRADE"—AS INVOLVED BY OR RESTING ON PATENT, TRADE NAME OR MARK, OR COPYRIGHT MONOPOLY, AND REFUSAL TO SELL—Continued.

the monopoly of a creator, something which is not and never has been within the prohibition of any law, antitrust or otherwise. On the contrary, that monopoly is encouraged by patent, trade-mark and copyright statutes and the rules of unfair competition. Therefore, the implication of plaintiff's premise, that there is something inherently wrong in defendant's monopoly, is false and misleading."

9. " \* \* \* 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 such 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.

10. "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."

11. "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. 568, 572, 573, 574.

<sup>10</sup> But see post, pars. 52, 88, et seq.

"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."<sup>10</sup>

See also *ante*, pars. 8-7, 11.

12. "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.

13. "Since the defendant, under the *Colgate Case*, merely ex-

ercised 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.

**TRADE CLASSIFICATIONS — WHOLE-SALER AS DISTINGUISHED FROM JOBBER AND RETAILER.**

14. Where defendant made its trade policy not to sell to consumers or retailers, but to confine its sales exclusively to wholesalers, though it for a time made an exception in favor of a company operating a chain of stores selling directly to the public, *Held*, on suit by the latter to compel defendant to continue selling to it on the ground that defendant's course of conduct, which included the reservation of the right to refuse to supply dealers failing to observe its suggested resale prices, constituted a violation of the Sherman Antitrust Act, and of the Clayton Act, that complainant was not a wholesaler but a retailer, and that defendant might decline to deal with it for any reason it saw fit (see *ante*, pars. 4-11, and annotations to Federal Trade Commission Act, pars. 85-89, pp. 480-482.) On the former question, i. e., complainant's status, the court stated:

15. " \* \* \* There is nothing unusual about such a course of business, and certainly it is

<sup>10</sup> On resale price maintenance in general and refusal to sell, as incidental thereto, see annotations to Federal Trade Commission Act, *ante*, para. 83-90, pp. 480-482.

## ANNOTATIONS, SEC. 2—Continued.

**TRADE CLASSIFICATIONS—WHOLE-SALER AS DISTINGUISHED FROM JOBBER AND RETAILER—Contd.**

no offense against common law, statutes, public policy, or good morals for a trader to confine his sales to persons who will buy from him in large quantities. A 'wholesaler' is one who buys in comparatively large quantities and who sells usually in smaller quantities but never to the ultimate consumer of an individual unit. He sells either to the 'jobber' (a sort of middleman) or to the 'retailer'; the latter being the one who sells to the consumer. The 'large' quantities bought by the wholesaler may vary greatly—from a fraction of a carload to many carloads; the character not of his buying but of his selling marks him as a wholesaler. If occasionally, in some particular business, this term loses somewhat of its original significance, such manifestly, as the record shows, is not the fact with the business now under consideration." *Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.* Circuit Court of Appeals, November 10, 1915, 227 Fed. 40-48.

**"WHERE THE EFFECT OF SUCH DISCRIMINATION MAY BE TO SUBSTANTIALLY LESSEN COMPETITION OR TEND TO CREATE A MONOPOLY IN ANY LINE OF COMMERCE."**

See also *ante*, par. 11; *post*, pars. 88-104.

16. "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 \* \* \*.

17. "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.*, January 17, 1919, 256 Fed. 571, 574.

Section referred to in passing. *United States v. American Can Co.*, February 23, 1916, 230 Fed. 859, 885.

\* See also *post*, pars. 52, 53.

**Sec. 3. TYING OR EXCLUSIVE LEASES, SALES OR CONTRACTS."**

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.

Unlawful where effect may be to substantially lessen competition.

**ANNOTATIONS.**

- |   |   |
|---|---|
| 18-21. Applicability to agency.   | 58-63. — By owner of patent—  |
| 22. Assignment of exclusive territory.  | License to manufacture under, conditioned on purchase raw materials therefor from licensor (lessor).  |
| 23-26. Construction — Limited to leases, sales, or contracts for sales and to lessees and purchasers.       | 64-66. — By owner of secret process or formula, good will, and trade names or marks—Assignment of part of potential business.   |
| 27-32. Construction of leases, sales, or contracts.   | 67. — Legality, presumption of.   |
| 33-44. Constitutionality — Patents previously granted.  | 68, 69. — Monopolistic tendencies.  |
| 45, 46. — Retroactive effect on existing contracts.   | 70-87. — In particular cases.   |
| 47. Interstate commerce—Contracts of domestic concern receiving subject matter through interstate commerce. | 88-104. "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." |
| 48. — Leases.   | 105. Whether limited by section 2.  |
| 49, 50. — Place of execution.   | 106-109. Whether retroactive.   |
| 51. — Place of act of infringement.   | Words and phrases—"Line of Commerce." (Reference to para. 58-63.)   |
| 52, 53. Pleading—In general.  | 110, 111. — "Understanding."  |
| 54. — Interstate commerce—Averment of transaction in, conclusion of pleader.                                | 112. In general.  |
| 55. — Necessary parties.  |   |
| 56, 57. Tying or exclusive contracts or leases—Absence of express assent on part of lessee or covenantee.   |   |

\* On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on p. 483.

## ANNOTATIONS, SEC. 3—Continued.

## APPLICABILITY TO AGENCY.

See also *post*, para. 27-32.

18. " \* \* \* 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 \* \* \*."

19. "If nothing but a sale were involved, I might support complainant's contention that defendant has violated the Clayton Act by preventing its wholesale dealers from selling the Pictorial Review through dealers and boys; \* \* \*."

20. " \* \* \* 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.

21. "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.

22. Where the owner of a product sold under a trademark 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*, February 7, 1916, 229 Fed. 224.

## CONSTRUCTION—LIMITED TO LEASES, SALES OR CONTRACTS FOR SALES, AND TO LESSEES AND PURCHASERS.

23. "The words 'lease,' 'sale,' 'contract for sale,' 'lessee,' and 'purchaser,' being the words used, and no other relation than lease and sale being mentioned, there is no expressed purpose in the clause quoted to make it cover any other subject than leases, sales, or contracts for sales, and to embrace no other persons than lessees and purchasers. The words are so clear they require no construction, and to needlessly construe, in order to broaden the scope of the statute,

whether done by the Trade Commission in administering, or by this court in supervising the administration of, the statute, would be for either or both such agencies to write into the statute what Congress has not expressly written. Not only has no ground been shown for contending that by necessary implication the statute covered other subjects than leases, sales, contracts for sales, or other persons than lessees and purchasers, but the Supreme Court had in *Motion Picture Patents Co. v Universal Film*, 243 U. S. 518, 37 Sup. Ct. 416, 61 L. Ed. 871, L. R. A. 1917E, 1187, Ann. Cas. 1918A, 959, quoted below, indicated its view that the clause in question was passed to meet a clearly defined controversy which concerned leases and sales. The case of *Henry v. Dick*, 224 U. S. 1, 32 Sup. Ct. 364, 56 L. Ed. 645, Ann. Cas. 1913D, 880, involved the sale of a patented machine, and the decision upheld a sales condition that other than supplies made by the seller should not be used in its operation by the buyer. Such being the adjudged law of the land, the Supreme Court, in *Motion Picture Patents Co. v. Universal Film*, 243 U. S. 518, 37 Sup. Ct. 421 (61 L. Ed. 871, L. R. A. 1917E, 1187, Ann. Cas. 1918A, 959), not only overruled that case but changed the decided law, saying:

24. "It is obvious that the conclusions arrived at in this opinion are such that the decision in *Henry v. Dick Co.*, 224 U. S. 1, must be regarded as overruled.' But in doing so that court suggested, as we have said, its view that Congress, in passing the quoted section of the Clayton Act, had done so in order

to meet the decision in *Henry v. Dick*, *supra*; the opinion stating, 'We are confirmed in the conclusion which we are announcing by the fact that since the decision of *Henry v. Dick Co.*, 224 U. S. 1, the Congress of the United States, the source of all rights under patents, as if in response to that decision, has enacted a law making it unlawful for any person engaged in interstate commerce "to lease or make a sale or contract for sale of goods \* \* \* machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale, \* \* \* or fix a price charged therefor \* \* \* on the condition, agreement or understanding that the lessee or purchaser thereof shall not use \* \* \* the goods, \* \* \* 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.' 38 Stat. 730.

25. "And in that connection it will be noted that in the dissenting opinion in *Henry v. Dick* (see 224 U. S. 50, 32 Sup. Ct. 381, 56 L. Ed. 645, Ann. Cas. 1913D, 880) the Chief Justice, with two Justices concurring, suggested the very congressional action which, we submit, was afterwards embodied in the Clayton Act, stating that their dissent would—

"serve to make it clear that if evils arise their continuance will not be caused by the interpretation now given to the statute, but will result from the inaction of the legislative do-

## ANNOTATIONS, SEC. 3—Continued.

**CONSTRUCTION—LIMITED TO LEASES, SALES OR CONTRACTS FOR SALES, AND TO LESSEES AND PURCHASERS—Continued.**

partment in failing to amend the statute so as to avoid such evils.'

26. "That, shortly after this decision was rendered, Congress passed the clause in question, gives additional weight to the view that Congress—

"'as if in response to that decision, has enacted a law making it unlawful for any person engaged in interstate commerce "to lease or make a sale or contract for sale of goods," etc.'" *Curtis Publishing Co. v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 904-906. (See case in this volume, p. 579 at pp. 606, 607.)

**CONSTRUCTION OF LEASES, SALES, OR CONTRACTS.**

See also *ante*, pars. 13-21.

27. "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.

28. "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 defend-

ant 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 without reference to its characterization by the parties themselves." *Standard Fashion Co. v. Magrane-Houston Co.*, March 9, 1918, 254 Fed. 493, 495.

29. *Held*, that a contract in substance one of sale, though called one of agency, containing a provision that the convenantee undertakes 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.

30. " \* \* \* we turn to the second question, namely: Did the present contract 'lease or make a sale or contract for the sale of goods'? \* \* \* Turning, then, to this present contract of the Curtis Company \* \* \* we note, first, that the agreement, which is entitled a 'District agency agreement,' is in form and verbiage an appointment by a publisher of an agent, and an agent for limited territory and for a mutually optional time, for the purpose of (a) selling and (b) distributing its magazines. Now, there are no words in the contract which purport or contemplate the sale of such magazines, and there is express provision, if (a) a sale, or (b) a distribution, to third parties, is not effected, the magazines consigned are to be returned to the publisher. Indeed, the nature of the transaction,

the necessary haste to get the magazines into the hands of the boys at once, shows of itself that there was no reason for transferring title by sale. It was not the handling of commodities of which sales would naturally be made. It was a contract for distributing and speeding up deliveries of an article whose whole value depended on the haste with which it passed from the agent's possession. \* \* \* All of these and other details that might be cited evidence that the relation created by this contract, and by its expressed terms meant to be created, was one of agency, and that there is an entire absence in the contract of any terms or words usual or requisite to effecting or evidencing a sale, as well as of circumstances inviting or necessitating a sale.

31. "We have not overlooked the fact that the contract provides for the maintenance by the agent in the hands of the publisher of an advance sum of money sufficient to indemnify the publisher for all magazines forwarded. But in our judgment this deposit can not, in view of the right of return, be regarded as a payment, but rather as an indemnity to secure payment, for all copies the agent does not return. \* \* \*

Nor is the fact to be overlooked that the contract, taken as a whole, could not be satisfied by the mere fact of sale to a buyer, for, if the transaction ended with a sale by the publisher, the whole spirit and purpose of the contract would be lost, which is that the distributing agent should distribute to the boys and the boys distribute to their personal customers.

32. "The subject of the contract is a large quantity of magazines, and the object of the contract is not to vest ownership of them in the other party to the contract, but to pass those magazines by the use of other agencies into the hands of the public. And the object of placing these magazines in the hands of the public is not alone to get from the real buyer of the magazine its comparatively small price, but by placing it in the hands of a vast number of buyers to thereby enable the publisher to obtain that advertising patronage which is the financial mainstay of all such periodical publications. It has therefore seemed to us that the unique character of the subject matter of this contract, the object the publisher had in view, and the phraseology, conditions, and obligations of this contract, unite to make the contract one of consignment to a distributing agent, who was furthering the business of his principals, and not one of a buyer, who thereby acquires title for his own individual purposes." *Curtis Publishing Co. v. Federal Trade Commission*, March 2, 1921, 270 Fed. 881, 900-908. (See case in this volume, p. 579 at pp. 607-609.)

CONSTITUTIONALITY—PATENTS PREVIOUSLY GRANTED."

33. " \* \* \* 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

<sup>22</sup> On patent or trade-mark monopoly as heretofore involved under this Act, see *ante*, para. 8-11, 22; *post*, para. 58-66.



## ANNOTATIONS, SEC. 3—Continued.

## CONSTITUTIONALITY—PATENTS PREVIOUSLY GRANTED—Continued.

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.

34. "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' \* \* \*."

35. "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. \* \* \*"

36. "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.

37. "If a business is subject to regulation, the contracts made in its conduct are subject to regulation. \* \* \*"

38. "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. \* \* \*"

39. "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. \* \* \*"

40. "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. \* \* \*"

41. "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. March 31, 1920, 264 Fed. 133,  
\* \* \*

42. " \* \* \* 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.'"

43. "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 lawmakers. \* \* \*"

44. "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 31, 1920, 264 Fed. 133,  
147-152, 154.

— RETROACTIVE EFFECT ON EXISTING CONTRACTS.

45. " \* \* \* 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. \* \* \*"

46. "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 cases]." *Elliott Machine Co. v. Center*, February 20, 1915, 227 Fed. 124, 126.

INTERSTATE COMMERCE<sup>22</sup>—CONTRACTS OF DOMESTIC CONCERNS RECEIVING SUBJECT MATTER THROUGH INTERSTATE COMMERCE.

47. "Federal Trade Commission and Clayton Acts have no application to a contract between a domestic oil company

<sup>22</sup> See also *ante*, annotations to Federal Trade Commission Act, para. 39-43, pp. 462, 463, and *post*, par. 54.

## ANNOTATIONS, SEC. 1—Continued.

INTERSTATE COMMERCE—CONTRACTS OF DOMESTIC CONCERNS RECEIVING SUBJECT MATTER THROUGH INTERSTATE COMMERCE—Continued.

and a domestic partnership engaged in the garage business," under the terms of which the oil company lent the partnership a gasoline pump in consideration, among other things, of the latter agreeing not to use said pump for any other product than the lender's, "claimed by the garage partners, when sued under it, to have been against public policy and in restraint of trade, though the gasoline involved was brought to plaintiff oil company's place of business by interstate commerce." (Quotation from syllabus.) *Quincy Oil Co. v. Sylvester*, March 7, 1921, 130 N. E. 217 (Mass.).

— LEASES.

48. "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.

— PLACE OF EXECUTION.

49. 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 exe-

cuted 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.

50. "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. Machinery Co.*, June 6, 1916, 234 *United Shoe Machinery Co.*, Fed. 127, 150, March 31, 1920, 264 Fed. 138, 158.

— INTERSTATE COMMERCE—AVERMENT OF TRANSACTION IN, CONCLUSION OF PLEADER.

— PLACE OF ACT OF INFRINGEMENT.

51. "Inasmuch as 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.

PLEADING—IN GENERAL.\*

52. "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.

53. "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 monopoly in interstate commerce."<sup>10</sup> *United States v. United Shoe*

54. "Relative to leases of shoe machinery being transactions in the course of interstate commerce, which alone are made unlawful by Clayton Act, October 15, 1914, paragraph 3 (Comp. St., par. 8835c), the allegation of answer merely that they were made in the course of such commerce is a conclusion of the pleader." (Quotation from syllabus.) *Witherell & Dobbins Co. v. United Shoe Machinery Co.*, Circuit Court of Appeals, November 9, 1920, 267 Fed. 950.

— NECESSARY PARTIES.

55. "The contract here involved covered the arrangements made by common carriers for moving the Georgia fruit crop during the season which was to begin 23 days after entry of the order to cease and desist. The previous year the crop amounted to 7,600 cars of peaches, and it had to be, and was, moved within a few weeks. To the action here complained of [contracts under the terms of which the company agreed to furnish refrigerator cars and refrigerator service, and the railroad agreed to pay the charges stipulated, patronizing the company exclusively, with respect to their requirements for such cars and service] and in which the contract was in part held to be illegal, the carriers were not parties. The carrier's consideration for the contract consisted of two promises, viz, first, that it would

<sup>10</sup> See also *ante*, annotations to Federal Trade Commission Act, *passim*, 52-55, p. 466.

<sup>11</sup> See also *ante*, par. 17.

## ANNOTATIONS, SEC. 3—Continued.

PLEADING—NECESSARY PARTIES—  
Continued.

take all its requirements of refrigerator cars from petitioner; and second, that it would pay icing charges and also three-fourths of 1 cent per mile run on the lines of the carrier, which was the usual charge (50 I. C. C. R., p. 660). Inasmuch as the exclusive clause covered the only agreement in the contract to use any cars, the destruction of that clause destroyed the mutuality of the contract and it could not be enforced. [Citing cases.] Such being the effect of the finding and order, the carriers were necessary parties. *U. S. v. U. S. Shoe Machinery Co.*, 247 U. S. 82, 60." *Fruit Growers Express, Inc., v. Federal Trade Commission*, June 16, 1921, 274 Fed. 205, 206.

TYING OR EXCLUSIVE CONTRACTS OR  
LEASES—ABSENCE OF EXPRESS  
ASSENT ON PART OF LESSEE, OR  
COVENANTEE.

56. " \* \* \* 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 con-

ditions of the leases, or suffer the penalties set out in the leases.

57. " \* \* \* 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.

— BY OWNER OF PATENT—LI-  
CENSE TO MANUFACTURE UNDER,  
CONDITIONED ON PURCHASE RAW  
MATERIALS THEREFOR FROM LI-  
CENSOR (LESSOR).

See also *ante*, pars. 8-11; *post*, par. 112.

58. Plaintiff sues to enjoin defendant from interfering with its contracts with third parties. Said contracts bound such third parties to purchase all materials for the manufacture of an article, the patents on which were owned by plaintiff in consideration of a license from plaintiff, to such third parties to manufacture such article.

The injunction was resisted on the ground, among others, that the contract violated section 3. The court, on motion for a preliminary injunction, declined to sustain this contention and granted the relief sought, stating in part:

59. "It appears from the affidavits that 82 licenses identical in terms and conditions with the license to the Eise-mann Company were granted by the plaintiff to gear manufacturers in the United States, and that this number constitutes more than a majority of the gear manufacturers of this country. It likewise appears that gears differing in composition and design, but supplying in whole or in part the want now filled by the Conrad gears, were being made and used in large numbers before the Conrad gears were put upon the market. The plaintiff's license agreement does not contain any condition that the licensee shall not make, use, or deal in the gears of any competitor or competitors of the plaintiff. The license agreement may not, therefore, be held unlawful as tending to create a monopoly in gears. If the Conrad gear has supplanted other gears, as to which there is no evidence, the cause for such supremacy lies outside the contract, and consequently does not bring the contract in conflict with either the statute or public policy.

60. "Again, as the gear material is unpatented, it may be assumed that there was, prior to the grant of the Conrad patents, a 'line of commerce' in such material; but, if the patents are valid, only of course for purposes other than for gears. Yet the license agreement contains no condition that

the licensee may not make or deal in the materials for use as ingredients of articles other than gears or use or deal in such articles when made. The patents, if valid, added a new use for the material, but left the field of prior uses of the material and of articles other than gears made therefrom unaffected. The license agreement may not, therefore, if the patents are valid, be held unlawful as tending to create a monopoly or to substantially lessen competition in the line of commerce of making, using, or selling articles made of fibrous material and a binder or laminations of cloth, and a phenolic condensation product, and the like, or articles other than gears made from such material. A contrary result would probably follow if the patents are not valid.

61. "But, assuming the patents to be valid, has the manufacture of gears under the Conrad patents created a new 'line of commerce' within the meaning of the Clayton Act, namely, the supplying of material for making Conrad gears, and if so, may the effect \* \* \* of the license agreement be to substantially lessen competition or tend to create a monopoly therein? Whether the making and sale of the materials to go into the Conrad gears is a 'line of commerce' within the meaning of the Clayton Act is under the evidence before the court not free from doubt and no opinion will now be expressed thereon. Assuming, however, that that would constitute such 'line of commerce,' and that the patents are valid, is the contract a lawful one? Revised Statutes, section 4884. (Comp. St. 9428), provides that:

## ANNOTATIONS, SEC. 3—Continued.

PLEADING—NECESSARY PARTIES—  
Continued.

take all its requirements of refrigerator cars from petitioner; and second, that it would pay icing charges and also three-fourths of 1 cent per mile run on the lines of the carrier, which was the usual charge (50 I. C. C. R., p. 660). Inasmuch as the exclusive clause covered the only agreement in the contract to use any cars, the destruction of that clause destroyed the mutuality of the contract and it could not be enforced. [Citing cases.] Such being the effect of the finding and order, the carriers were necessary parties. *U. S. v. U. S. Shoe Machinery Co.*, 247 U. S. 82, 60." *Fruit Growers Express, Inc., v. Federal Trade Commission*, June 16, 1921, 274 Fed. 205, 206.

TYING OR EXCLUSIVE CONTRACTS OR  
LEASES—ABSENCE OF EXPRESS  
ASSENT ON PART OF LESSEE, OR  
COVENANTEE.

56. " \* \* \* 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 con-

ditions of the leases, or suffer the penalties set out in the leases.

57. " \* \* \* 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.

—BY OWNER OF PATENT—LI-  
CENSE TO MANUFACTURE UNDER,  
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The injunction was resisted on the ground, among others, that the contract violated section 3. The court, on motion for a preliminary injunction, declined to sustain this contention and granted the relief sought, stating in part:

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60. "Again, as the gear material is unpatented, it may be assumed that there was, prior to the grant of the Conrad patents, a 'line of commerce' in such material; but, if the patents are valid, only of course for purposes other than for gears. Yet the license agreement contains no condition that

the licensee may not make or deal in the materials for use as ingredients of articles other than gears or use or deal in such articles when made. The patents, if valid, added a new use for the material, but left the field of prior uses of the material and of articles other than gears made therefrom unaffected. The license agreement may not, therefore, if the patents are valid, be held unlawful as tending to create a monopoly or to substantially lessen competition in the line of commerce of making, using, or selling articles made of fibrous material and a binder or laminations of cloth, and a phenolic condensation product, and the like, or articles other than gears made from such material. A contrary result would probably follow if the patents are not valid.

61. "But, assuming the patents to be valid, has the manufacture of gears under the Conrad patents created a new 'line of commerce' within the meaning of the Clayton Act, namely, the supplying of material for making Conrad gears, and if so, may the effect \* \* \* of the license agreement be to substantially lessen competition or tend to create a monopoly therein? Whether the making and sale of the materials to go into the Conrad gears is a 'line of commerce' within the meaning of the Clayton Act is under the evidence before the court not free from doubt and no opinion will now be expressed thereon. Assuming, however, that that would constitute such 'line of commerce,' and that the patents are valid, is the contract a lawful one? Revised Statutes, section 4884 (Comp. St. 9428), provides that:



## ANNOTATIONS, SEC. 3—Continued.

**TYING OR EXCLUSIVE CONTRACTS OR  
LEASES—BY OWNER OF PATENT—  
LICENSE TO MANUFACTURE UN-  
DER, CONDITIONED ON PURCHASE  
RAW MATERIALS THEREFOR FROM  
LICENSOR (LESSOR)—Continued.**

'Every patent shall contain \* \* \* grant to the patentee, his heirs, or assigns, for the term of 17 years, of the exclusive right to make, use, and vend the invention or discovery throughout the United States and the territories thereof.'

62. "A patent gives to the patentee the right not only to prevent others from making the patented article, but also to prevent others from making any ingredient or part of such patented article with intent that such ingredient or part shall be used in the patented article, for as a patentee may maintain a suit for infringement against a person making such patented article, so may he also maintain a suit for contributory infringement against a person making and selling the ingredients or parts for use in the patented article. The right to make the parts and material entering into the patented article, and to exclude others from making them, if such parts and material are unpatented as in this case, would seem to be an inevitable adjunct of the patent and a part of the patent monopoly. There is no evidence in this case that the patentee or his assignee, the plaintiff, ever surrendered this monopoly to the public. I do not see, therefore, that the effect of granting a license to manufacture the Conrad gears, but reserving to the licensor the right to continue to make the

gear material, was to surrender to the public the licensor's monopoly to make the material entering into such gears, or to create a 'line of commerce' within the meaning of the Clayton Act.

63. "Nor do I see how the effect of reserving such right to the licensor may be to lessen competition that never existed or tend to create a monopoly that was complete in the licensor before the contract was made. This tentative conclusion is, I think, in accord with *Wallace v. Homes*, 9 Blatch. 65, 29 Fed. Cas. 74, and not in conflict with *Motion Picture Co. v. Universal Film Co.*, 243 U. S. 502, 37 Sup. Ct. 416, 61 L. Ed. 871, L. R. A. 1917E, 1187, Ann. Cas. 1918A, 959; for as I understand the latter case, the question there decided is radically different from the one now under consideration. Furthermore, the trend of the Motion Picture Company Case is not manifest in *U. S. v. United Shoe Mach. Co.*, 247 U. S. 32, 38 Sup. Ct. 473, 62 L. Ed. 968, and it is not clear that the latter case did not modify the former. It is thus seen that if the making and selling of material for Conrad gears is a 'line of commerce,' within the meaning of the Clayton Act, which is not decided, that the validity of the contract depends upon the validity of the patents—not the admission of validity made by the licensee, but upon their actual validity." *Westinghouse Electric & Mfg. Co. v. Diamond State Fibre Co.*, March 27, 1920, 268 Fed. 121, 125, 126.

— BY OWNER OF SECRET PROCESS  
OR FORMULA, GOOD WILL, AND  
TRADE NAMES OR MARKS—ASSIGN-  
MENT OF PART OF POTENTIAL  
BUSINESS.

See also *ante*, pars. 8-11; *post*,  
par. 112.

64. Sued to enforce a contract made by its predecessor, in which said predecessor, owner of a valuable secret process or formula for making a beverage, theretofore confined to the *fountain* trade, and of a valuable good will, and trade names and marks in connection with its product, gave exclusive rights for the *bottling* business in a large territory to complainant's predecessors, and the right to use its trade names and marks in connection therewith, in return for their undertaking, among other things, to carry on such business in the territory in question and take all their syrup from it, defendant contended that the contract was void under the law of Georgia, the Sherman Act, and the Clayton Act. The court stated, in declining to sustain this contention:

65. "It is next contended by the defendant that, if the contract be construed as it is now construed by the court, it is void under the law of Georgia, the Sherman Act, and the Clayton Act. In this connection it should be observed that the effect of the contract was not a merger or consolidation of businesses theretofore existing in severalty, but was the complete severance of the bottling business from the business of supplying soda fountains with the syrup, while the result which the defendant seeks under statutes intended to prevent monop-

oly would give to the defendant a complete and exclusive monopoly of both the fountain business and the bottling business. The accomplishment of this result through the instrumentality of the antimonopoly statutes would, indeed, be unique. That of necessity there is competition between the bottled drink and the fountain drink can not be seriously questioned. The contract did not fix a price for the bottled drink. It did not fix a price for the fountain drink. The defendant may sell its fountain syrup for such price as it pleases subject to the inevitable result, if it raises its price too high, that the demand for the fountain drink will decrease, and that for the bottled drink increase. The converse would, of course, be true, should the price of the bottled drink greatly exceed that of the fountain drink.

66. "The defendant points out certain covenants \* \* \* to show that the contract is in restraint of trade. It cites *Floding v. Floding*, 137 Ga. 531, 73 S. E. 729, and other cases, to show that the courts of Georgia refuse to recognize an agreement not to operate the same business in a territory very large in area as being in [un?]-reasonable restraint of trade. But such cases have no analogy to the case at bar, where the effect of the contract was not to transfer the whole business of the vendor, but only an incidental and potential business arising out of the main business of the vendor. It is unnecessary to analyze the several covenants pointed out as being in unreasonable restraint of trade. Those covenants at most operate as a partial and not as a gen-

## ANNOTATIONS, SEC. 3—Continued.

**TYING OR EXCLUSIVE CONTRACTS OR LEASES—BY OWNER OF SECRET PROCESS OR FORMULA, GOOD WILL, AND TRADE NAMES OR MARKS—ASSIGNMENT OF PART OF POTENTIAL BUSINESS—Continued.**

eral restraint, and are 'merely ancillary to the main purpose of a lawful contract, and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party,' or were covenants necessary to protect the Georgia corporation in its retained business. Such provisions are valid. *United States v. Addyston Pipe & Steel Co.*, 85 Fed. 271, 29 C. C. A. 141, 46 L. R. A. 122; *John D. Park & Sons Co. v. Hartman*, 153 Fed. 24, 82 C. C. A. 158, 12 L. R. A. (N. S.) 135. I find in the contract nothing having an effect or intended to have an effect to defeat or lessen competition or to encourage or tend to create a monopoly, nor do I find anything therein that may be said to be in unreasonable restraint of trade." *The Coca-Cola Bottling Co. v. The Coca-Cola Co.*, November 8, 1920, 209 Fed. 796, 813, 814.

— LEGALITY, PRESUMPTION OF.

67. " \* \* \* 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.*, Circuit Court of Appeals, June 28, 1919, 259 Fed. 793, 802.

— MONOPOLISTIC TENDENCIES.

68. "The Commission justifies the order complained of by looking to the future rather than at the present, \* \* \*"

"The Commission looking forward sees in the present highly competitive business of the various wholesalers a seed which will in time produce the fruit condemned in *Patterson v. United States*, 222 Fed. 509, \* \* \*"

69. "It may be admitted that one function of the Trade Commission is to discern and suppress such practices in their beginning; but a thing exists from its beginning, and it is not a conclusion of law from any facts here found that a system [referring to petitioners' system, condemned by the Commission, of leasing oil tanks and pumps for a nominal rental in consideration of the lessee using the lessor's product exclusively in connection therewith] which at present is keenly competitive, extremely advantageous to the public, and, in the opinion of a majority of the competent witnesses economical, is at present unfair to anyone or unfair because tending to monopoly. A tendency is an inference from proven facts, and an inference from the facts as found by the Commission is a question of law for the court. As a matter of law there is at present no violation of the Trade Commission statute; therefore the first of

respondent's contentions can not be sustained." *Standard Oil Co. of New York v. Federal Trade Commission*, May 11, 1921, 273 Fed. 478, 481, 482. (See case in this volume, p. 622 at pp. 626, 627.)

— IN PARTICULAR CASES.

See also *post*, par. 112.

70. *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*, January 16, 1915, 219 Fed. 755, 756.

71. 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 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 oper-

ated 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 in-soles 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 defend-

## ANNOTATIONS, SEC. 3—Continued.

**TYING OR EXCLUSIVE CONTRACTS OR LEASES—IN PARTICULAR CASES—Continued.**

ants, 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.

72. "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.*, November 9, 1915, 227 Fed. 507, 508, 509.

73. 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 machinery 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:

74. "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.

75. "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.

76. "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. \* \* \*

77. "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, 1910, 259 Fed. 793, 798.

78. "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 peculiarities of the particular business to which the contract relates \* \* \*."

79. "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 customers 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.

80. "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.)

81. *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.

82. That provisions in said leases to the effect that the

TYING OR EXCLUSIVE CONTRACTS OR  
LEASES—IN PARTICULAR CASES—  
Continued.

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.

83. 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.*, March 31, 1920, 264 Fed. 138, 165-169.

84. Plaintiff sues to enjoin defendant from interference with its contracts with third parties. Said contracts bound such third parties to purchase all materials for the manufacture of an article, the patents on which were owned by plaintiff, in consideration of license from plaintiff to such third parties to manufacture such article. The injunction was resisted on the ground, among others, that the contract violated section 3. *Held*, That such contention can not be sustained. (See *ante*, pars. 58-63.) *Westinghouse Electric & Mfg. Co. v. Diamond State Fibre Co.*, March 27, 1920, 268 Fed. 121.

85. Sued to enforce a contract made by its predecessor, in which said predecessor, owner of a valuable secret process or formula for making a beverage, theretofore confined to the *fountain* trade, and of a valuable good will, and trade names and marks in connection with its product, gave exclusive rights for the *bottling* business in a large territory to complainant's predecessors, and the right to use its trade names and marks in connection therewith, in return for their undertaking, among other things, to carry on such business in the territory in question and take all their syrup from it, defendant contended that the contract was void under the law of Georgia, the Sherman Act, and the Clayton Act. *Held*, That such contention can not be sustained. (See *ante*, pars. 63-66.) *The Coca-Cola Bottling Co. v. The Coca-Cola Co.*, November 8, 1920, 269 Fed. 796.

86. 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; but where, in the opinion of the court, competition between the distributors or loaners was very keen, the practice was extremely advantageous to the public, and was regarded by many distributors as a profitable form of advertising and of keeping before the consuming public their trade-mark, borne by the equipment leased or loaned by them, the court observing in this connection that the distribution of another manufacturer's product therefrom would be dishonest: *Held*, That such leases, under the circumstances set forth, did not violate section 3. *Standard Oil Co. of New York v. Federal Trade Commission*, May 11, 1921, 273 Fed. 478. (For order similar to that reversed, see 2 F. T. C. 346 at 350. See case in this volume at p. 622.)

87. Commission's order in *Fruit Growers Express, Inc.*, 2

F. T. C. 369, in which the Commission found that contracts entered into between the company and the railroads, under the terms of which contracts the company agreed to furnish refrigerator cars and refrigerator service, and the railroads agreed to pay the charges stipulated and to patronize the company exclusively, with respect to their requirements for the cars and service involved, reversed in *Fruit Growers Express v. Federal Trade Commission*, June 18, 1921, 274 Fed. 205, on the ground that jurisdiction under section 11 was in the Interstate Commerce Commission and on the ground that the pleading was defective in that the railroads had not been joined as necessary parties. (See *ante*, par. 55, and *post*, par. 120, p. 527. See case at p. 628 of this volume.)

"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."

See also *ante*, pars. 74-79.

88. "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



## 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.

a real, as opposed to an imaginary or fanciful lessening of competition, was intended.

89. "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.

90. "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.

91. "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.*, March 9, 1918, 254 Fed. 493, 499. (District Court.)

92. "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.]

93. "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."

94. "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.*, Circuit Court of Appeals, June 28, 1919, 259 Fed. 793, 795, 796.

95. "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."

96. "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. \* \* \*." Anderson, Circuit Judge, in *Standard Fashion Co. v. Magrane Houston Co.*, Circuit Court of Appeals, 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.

97. "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.].

98. "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*, 243 U. S. 231, 238, 38 Sup. Ct. 242, 244 (62 L. Ed. 633).

99. "'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 save an otherwise objectionable regulation or the reverse, but because knowledge of intent may help the court to interpret facts and to predict consequences.'"

100. "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'" (pp. 799, 800, 801).

101. "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

## 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.

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 language differs materially from the language 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."

102. "The Clayton Act as the court construes it, is intended as a preventive Act, to arrest the creation of trusts, etc., in their incipency and before consummation \* \* \*."

103. "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'?

104. "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.*, March 31, 1920, 264 Fed. 138, 161-163.

## WHETHER LIMITED BY SECTION 2.

105. "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, 163.

## WHETHER RETROACTIVE.

106. "Counsel for defendant earnestly insists that, even if Congress so intended, the statute can not be construed to ap-

ply 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 c o n t r a c t s of lease.]” *Elliott Machine Co. v. Center*, February 20, 1915, 227 Fed. 124, 126; *United States v. United Shoe Machinery Co.*, November 9, 1915, 227 Fed. 507, 510.

107. “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 ‘shall’ indicates that the act is to be prospective, and not retrospective \* \* \*.”

108. “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 \* \* \*.”

109. “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.*, March 31, 1920, 264 Fed., 138, 171, 174, 175. 502, 517.

#### Sec. 4. VIOLATION OF ANTITRUST LAWS—DAMAGES TO PERSON INJURED.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws<sup>26a</sup> may sue therefor in any district court

May sue in any United States district court, and recover threefold damages, including cost of suit.

<sup>26a</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483

#### WORDS AND PHRASES—“LINE OF COMMERCE.”

See *ante*, pars. 58-63.

#### —“UNDERSTANDING.”

110. “\* \* \* The word ‘understanding,’ as defined by lexicographers, includes mental discernment, comprehension, clear knowledge \* \* \*.”

111. “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.

112. 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—Continued.**

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.*, December 9, 1915, 228 Fed. 209.

*American Sea Green Slate Co. v. O'Halloran*, December 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.

*Venner v. Pennsylvania Steel Co.*, April 18, 1918, 250 Fed. 292.

*Baran v. Goodyear Tire & Rubber Co.*, July 29, 1918, 256 Fed. 570.

*Sampliner v. Motion Picture Patents Co.*, Circuit Court of Appeals, December 11, 1918, 255 Fed. 242, 243.

**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 <sup>25a</sup> laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Consent judgments or decrees excepted.

Running of statute of limitations with respect to private rights suspended

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,

<sup>25a</sup> For text of Sherman Act, see footnote on pp. 482-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.

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.

pending proceeding by the United States under anti-trust laws.

## DECISIONS.

*Buckeye Powder Co. v. Du Pont Powder Co.*, December 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.

*Charles A. Ramsay Co. v. Associated Bill Posters of U. S. & C.*, September 30, 1919, 272 Fed. 323, 328; December 23, 1920, 271 Fed. 140.

**Sec. 6. LABOR OF HUMAN BEINGS NOT A COMMODITY OR ARTICLE OF COMMERCE.**

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws<sup>25a</sup> shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects 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.

Labor, agricultural, or horticultural organizations and their members, organized for mutual help and without capital stock, not affected by anti-trust laws with respect to their legitimate objects.

## 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.

*Paine Lumber Co. v. Neal*, June 11, 1917, 244 U. S. 459, 483, 487.

*Montgomery v. Pacific Electric Railway Co.*, May 26, 1919, Circuit Court of Appeals, 258 Fed. 382, 389.

*Dall Overland Co. v. Willys Overland*, December 27, 1919, 263 Fed. 171, 185, 186.

*Langenberg Hat Co. v. United Cloth Hat & Cap Makers*, June 1, 1920, 266 Fed. 127, 129.

*Colyer v. Skeffington*, June 23, 1920, 265 Fed. 17, 62.

*Buyer v. Guilan*, Circuit Court of Appeals, February 2, 1921, 271 Fed. 65, 69.

*Duplex Press Co. v. Deering*, January 3, 1921, 254 U. S. 443, 469, 474.

<sup>25a</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.

**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 competitions, restrain commerce, or tend to create a monopoly.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

Purchase solely for investment excepted.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Formation of subsidiary corporations for immediate lawful business also excepted.

Common carriers excepted with reference to branch or tap lines where no substantial competition.

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

\*On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on p. 483.

It should be noted also that corporations for export trade are excepted from the provisions of this section. See p. 530, sec. 3.

stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws,<sup>200</sup> nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Existing rights heretofore lawfully acquired not affected.

#### ANNOTATIONS.

113-116. Acquisition of stock, etc.—In particular cases.

117. Whether retroactive.

#### ACQUISITION OF STOCK, ETC.—IN PARTICULAR CASES.

113. "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 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 acquisi-

tion of these corporations was plainly in violation of the Clayton Act, and that their combination in the Boston Fish Pier Co. must be dissolved.

114. "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.

<sup>200</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.



## ANNOTATIONS, SEC. 7—Continued.

## ACQUISITION OF STOCK, ETC.—IN PARTICULAR CASES—Continued.

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. 8, 1920, 254 U. S. 77.)

115. "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*, October 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 November 8, 1920, 254 U. S. 77.)

116. Section referred to but not passed on in *Venner v. Pennsylvania Steel Co.*, Circuit Court of Appeals, June 30, 1916, 233 Fed 407, 409, involving proposed acquisition of assets of one corporation by another corporation, alleged to violate the act; (supplementary bill) April 18, 1918, 250 Fed. 292.

## WHETHER RETROACTIVE.

117. Section assumed not intended to be. *Hyams v. Calumet & Hecla Mining Co.*, January 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.\***

Not to serve more than one bank, banking association, or trust

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

\* By the last paragraph of the Act of Sept. 7, 1916, amending the Federal Reserve Act, ch. 461, 39 Stat. 752 at 756, it is provided that the provisions of sec. 8 shall not apply to "A director or other officer, agent or employee of any member bank" who may, "with the approval of the Federal Reserve Board be a director or other officer, agent or employee of any" bank or corporation, "chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States," in the capital stock of which such member bank may have invested under the conditions and circumstances set forth in the Act.

On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on p. 483.

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.

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 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

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.

Class A director of Federal reserve bank excepted, and

**Sec. 8. DIRECTORS, OFFICERS, OR EMPLOYEES OF BANKS, BANKING ASSOCIATIONS, OR TRUST COMPANIES OPERATING UNDER LAWS OF UNITED STATES AND DIRECTORS OF OTHER COMPANIES—Continued.**

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.

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.

Consent may be secured before applicant elected director.

The consent of the Federal Reserve Board may be procured before the person applying therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.<sup>28</sup>

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.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.<sup>28a</sup> The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provi-

How eligibility determined.

<sup>28</sup> The part of the section immediately preceding beginning with, "*And provided further*, That nothing in this Act" to this point, amendments made by act May 15, 1916, ch. 120, and act May 26, 1920, ch. 206.

<sup>28a</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.

sions of this Act it shall be lawful for him to continue as such for one year thereafter.

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.

Eligibility at time of election or selection not changed for one year.

#### ANNOTATIONS.

##### INTERLOCKING DIRECTORATES—ABSENCE OF COMPETITIVE FEATURES.

118. "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 principle opposed to the suppression of competition, as, for instance, the underlying principle of the *Northern Secur-*

*ties 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 October 15, 1914, ch. 323, 38 Stat. L. 732, section 8 [Comp. Stat. sec. 8835h]) \* \* \*." *City of Holland v. Holland City Gas Co.*, Circuit Court of Appeals, February 13, 1919, 257 Fed. 679, 685.

#### IN GENERAL.

119. Provisions of section disregarded as not then operative. *Hyams v. Calumet & Hecla Mining Co.*, Circuit Court of Appeals, January 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 whole or in part, or willfully or knowingly converts the

**Sec. 9. WILLFUL MISAPPLICATION, EMBEZZLEMENT, ETC., OF MONEYS, FUNDS, ETC., OF COMMON CARRIER A FELONY—Continued.**

same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Penalty, fine, or imprisonment, or both.

May prosecute in district court of United States for district where offense committed.

Jurisdiction of State courts not affected. Their judgments a bar to prosecution hereunder.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been 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.

DECISIONS.

*Colyer v. Skeffington*, June 23, 1920, 265 Fed. 17, 62.

**Sec. 10. LIMITATIONS UPON DEALINGS AND CONTRACTS OF COMMON CARRIERS.**

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.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general

managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Penalty for preventing or attempting to prevent free and fair competition in bidding.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

Carrier to report transactions hereunder to Interstate Commerce Commission.

Commission to report violations, and its own findings to Attorney General.

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.

Misdemeanor for director, etc., to knowingly vote for, direct, aid, etc., in violation of this section.

Penalty.

The effective date on and after which the provisions of section 10 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall become and be effective is hereby deferred and extended to January first, nineteen hundred and twenty-one: *Provided*, That such extension shall not apply in the case of any corporation organized after January twelfth, nineteen hundred and eighteen.<sup>29</sup>

Effective date extended to Jan. 1, 1921,

Except as to corporations organized after Jan. 12, 1918.

<sup>29</sup> Above paragraph, sec. 501 of the Transportation Act, Feb. 28, 1920, ch. 91, 41 Stat. 458 at 499.

**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.

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.

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.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so 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

\* On provisions of the Shipping Board Act, Packers and Stockyards Act, 1921, and Transportation Act, limiting the scope of the Clayton Act in certain cases, see second, third, and fourth paragraphs of the footnote on p. 483.

order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

Commission or board may modify or set aside its order until transcript of record filed in Circuit Court of Appeals.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall

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.

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 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.



**Sec. 11. JURISDICTION TO ENFORCE COMPLIANCE. COMPLAINTS, FINDINGS, AND ORDERS. APPEALS. SERVICE—Continued.**

Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Petition by respondent to review order to cease and desist.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A

To be served on commission or board which thereupon to certify and file transcript of record in the court.

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.

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.

Proceedings to have precedence over other cases, and to be expedited.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.<sup>30a</sup>

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

Service of commission's or board's complaints, orders, and other processes.

Personal; or

(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

At office or place of business; or

By registered mail.

Verified return of person serving, and return post-office receipt, proof of service.

<sup>30a</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.

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.

#### ANNOTATIONS.

##### WORDS AND PHRASES—"WHERE APPLICABLE TO COMMON CARRIERS."

120. The words "where applicable to common carriers" in section 11 of the Clayton Act must mean that where the facts involve common carriers, or the business of common carriers, then the jurisdiction is solely in the Interstate Commerce Commission. The action complained of [contracts under the terms of which the company agreed to furnish refrigerator

cars and refrigerator service, and the railroad agreed to pay the charges stipulated, and to patronize the company exclusively, with respect to their requirements for such cars and service] involved common carriers and tended to very greatly affect their business. Respondent was therefore without jurisdiction." *Fruit Growers Express, Inc., v. Federal Trade Commission*, June 16, 1921, 274 Fed. 205, 207. (See case in this volume, p. 628 at p. 630.)

#### Sec. 12. PLACE OF PROCEEDINGS UNDER ANTITRUST LAWS. SERVICE OF PROCESS.

SEC. 12. That any suit, action, or proceeding under the antitrust laws<sup>80a</sup> against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Proceeding may be instituted or process served in district of which corporation an inhabitant or wherever it may be found.

#### DECISIONS.

*Great Atlantic & Pacific Tea Co. v. Cream of Wheat Co.*, July 20, 1915, 224 Fed. 566.

*Frey & Son, Inc., v. Cudahy Packing Co.*, December 9, 1915, 228 Fed. 209.

*Thorburn v. Gates*, July 17, 1915, 225 Fed. 613, 615.

*Frey & Son, Inc., v. Cudahy Packing Co.*, Circuit Court of Appeals, April 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.*, April 18, 1918, 250 Fed. 292, 297.

*Wainwright v. Pennsylvania R. Co.*, October 22, 1918, 253 Fed. 459, 463.

*Ben C. Jones & Co. v. West Publishing Co.*, March 5, 1921, 270 Fed. 563, 566.

<sup>80a</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.

**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<sup>80a</sup> 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,<sup>80a</sup> such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

Deemed also that of individual directors, officers, etc.

A misdemeanor.

Penalty, fine or imprisonment, or both.

**Sec. 15. JURISDICTION OF UNITED STATES DISTRICT COURTS TO PREVENT AND RESTRAIN VIOLATIONS OF THIS ACT.**

**Sec. 15.** That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise pro-

District attorneys, under direction of Attorney General, to institute proceedings.

Proceedings may be by way of petition setting forth the case, etc.

<sup>80a</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.

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 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 before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

After due notice, Court to proceed to hearing and determination as soon as may be.

Pending petition instituting proceeding Court may make temporary restraining order or prohibition.

Court may summon other parties.

## DECISIONS.

*Watnwright v. Pennsylvania R. Co.*, October 22, 1918, 253 Fed. 459, 463.

**Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS.**

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws,<sup>808</sup> including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

Open to any person, firm, etc., on same conditions and principles as other injunctive relief by courts of equity against threatened conduct that will cause loss or damage.

Preliminary injunction may issue upon proper bond and showing.

But United States alone may sue for injunctive relief against common carrier subject to Act to Regulate Commerce.

<sup>808</sup> For text of Sherman Act, see footnote on pp. 483-485. As enumerated in Clayton Act, see first paragraph thereof on pp. 482, 483.

**Sec. 16. INJUNCTIVE RELIEF AGAINST THREATENED LOSS BY VIOLATION OF ANTITRUST LAWS—Continued.**

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.*, January 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.*, April 18, 1918, 250 Fed. 292.

*Colyer v. Skeffington*, June 23, 1920, 265 Fed. 17, 62.

*General Investment Co. v. Lake Shore & M. S. Ry. Co.*, Circuit Court of Appeals, December 8, 1920, 269 Fed. 235, 237, 238, 241.

*Geddes v. Anaconda Mining Co.*, January 24, 1921, 254 U. S. 590, 593.

*Duplex Press Co. v. Deering*, January 3, 1921, 254 U. S. 443, 469, 474.

**Sec. 17. PRELIMINARY INJUNCTIONS. TEMPORARY RESTRAINING ORDERS.**

No preliminary injunction without notice.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order in absence of a showing of immediate and irreparable injury or loss.

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 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

Temporary restraining order, to show date and hour of issue, define injury, etc.

If without notice, issuance of preliminary injunction to be disposed of at earliest possible moment.

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.

Opposite party may move dissolution or modification on two days' notice.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Sec. 263 of Judicial Code repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

Sec. 266 not affected.

#### 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, April 19, 1919, 258 Fed. 346, 349.

*Dahl Overland Co. v. Willys Overland*, December 27, 1919, 263 Fed. 171, 186.

*King v. Weiss & Lesh Mfg. Co.*, Circuit Court of Appeals, June 11, 1920, 266 Fed. 257, 259.

#### Sec. 18. NO RESTRAINING ORDER OR INTERLOCUTORY ORDER OF INJUNCTION WITHOUT GIVING SECURITY.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Except as provided in sec. 16 of this act.

#### 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 rea-

Must set forth reasons, be specific, and describe acts to be restrained.

**Sec. 19. ORDERS OF INJUNCTION OR RESTRAINING ORDERS—REQUIREMENTS—Continued.**

sonable 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.

Binding only on parties to suit, their officers, etc.

**DECISIONS.**

*Lion Tractor Co. v. Bull Tractor Co.*, Circuit Court of Appeals, February 12, 1916, 231 Fed. 156, 162.

*Davis v. Hayden*, November 9, 1916, 238 Fed. 734.

*Stephens v. Ohio State Telephone Co.*, February 14, 1917, 240 Fed. 759, 765, 776.

*King v. Weiss & Lesh Mfg. Co.*, Circuit Court of Appeals, June 11, 1920, 266 Fed. 257, 260.

**Sec. 20. RESTRAINING ORDERS OR INJUNCTIONS BETWEEN AN EMPLOYER AND EMPLOYEES, EMPLOYERS AND EMPLOYEES, ETC., INVOLVING OR GROWING OUT OF TERMS OR CONDITIONS OF EMPLOYMENT.**

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Not to issue unless necessary to prevent irreparable injury.

Threatened property or property rights must be described with particularity.

Not to prohibit any person or persons from terminating any relation of employment, recommending others by peaceful means so to do, etc.

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 pur-

pose 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.

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.*, September 5, 1916, 236 Fed. 964, 970-972.

*Stephens v. Ohio State Telephone Co.*, February 14, 1917, 240 Fed. 759, 765, 769, 778.

*Duplex Printing Co. v. Deering*, April 23, 1917, 247 Fed. 192, 195.

*Patne 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.*, March 22, 1918, 250 Fed. 890, 892, 893.

*United States v. Norris*, December 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.*, December 27, 1919, 263 Fed. 171, 185, 186, 187.

*Vonnigut Machinery Co. v. Toledo Machine & Tool Co.*, February 7, 1920, 263 Fed. 192, 197, 200-202.

*Kinloch Telephone Co. v. Local Union No. 2*, May 6, 1920, 265 Fed. 312, 315-320.

*Langenberg Hat Co. v. United Cloth Hat & Cap Makers*, June 11, 1920, 266 Fed. 127, 129.

*King v. Weiss & Lesh Mfg. Co.*, Circuit Court of Appeals, June 11, 1920, 266 Fed. 257, 258, 260.

*Herket & Meisel Trunk Co. v. United Leather Workers I. U.*, November 26, 1920, 268 Fed. 662, 667.

*Duplex Press Co. v. Deering*, January 3, 1921, 254 U. S. 443, 469, 471, et seq.

*Buyer v. Gulllan*, Circuit Court of Appeals, February 2, 1921, 271 Fed. 65, 69.

*Birmingham Trust & Savings Co. v. Atlanta B. & A. Ry. Co.*, March 26, 1921, 271 Fed. 743, 745.



**Sec. 21. DISOBEDIENCE OF ANY LAWFUL WRIT, PROCESS, ETC., OF ANY UNITED STATES DISTRICT COURT, OR ANY DISTRICT OF COLUMBIA COURT.**

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

If act done also a criminal offense under laws of United States or of State in which committed, person to be proceeded against as hereinafter provided.

DECISIONS.

*Coutz v. United States*, Circuit Court of Appeals, March 4, 1918, 249 Fed. 595, 597.

*Sweepston 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 return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however*, 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

Court or judge may issue rule to show cause why person charged should not be punished.

Trial if alleged contempt not sufficiently purged by return.

Failure of natural person to make return. Attachment against person.

for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

If body corporate, attachment for sequestration of its property.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Trial may be by court or, upon demand of accused, by jury.

Trial to conform to practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Penalty, fine or imprisonment, or both.

Fine paid to United States or complainant or other party injured. If accused natural person, fine to United States not to exceed \$1,000.

Court or judge may dispense with rule and issue attachment for arrest.

Accused to be brought before judge promptly and admitted to bail. Proceedings thereafter same as if rule had issued.

## DECISIONS.

*In re Heyman*, March 22, 1915, 225 Fed. 1000, 1003.

*Stephens v. Ohio State Telephone*, February 14, 1917, 240 Fed. 750, 764.

*Couts v. United States*, Circuit Court of Appeals, March 4, 1918, 249 Fed. 595-7.

**Sec. 22. RULE TO SHOW CAUSE OR ARREST. TRIAL PENALTIES—Continued.**

DECISIONS—continued.

*Sweepston 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.

*Jennings v. United States*, Circuit Court of Appeals, Feb. 17, 1920, 264 Fed. 399, 405.

**Sec. 23. EVIDENCE. APPEALS.**

Evidence may be preserved by bill of exceptions.

Judgment reviewable upon writ of error.

Granting of writ to stay execution, and

Accused to be admitted to bail.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

**Sec. 24. CASES OF CONTEMPT NOT SPECIFICALLY EMBRACED IN SEC. 21 NOT AFFECTED.**

Committed in or near presence of court, or

In disobedience of any lawful writ or process in suit or action by or in behalf of United States,

And other cases not in sec. 21,

Punished in conformity with prevailing usages at law and in equity.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

DECISIONS.

*Couts v. United States*, Circuit Court of Appeals, March 4, 1918, 249 Fed. 595-597.

*Sweepston 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.

*U. S. v. Cohen*, October 28, 1920, 268 Fed. 420, 425.

**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.

**ANNOTATIONS TO ACT AS A WHOLE.**

**BESALE PRICE MAINTENANCE.<sup>23</sup>**

See also *ante*, pars. 4-15.

121. 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. United Motor Sales Co.*, August 1, 1917, Circuit Court of Appeals, 244 Fed. 156, 160.

123. 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.

124. Act, as a whole, referred to, in a more or less general way, incidentally, or in passing, in *United States v. Rintelen*, June 29, 1916, 233 Fed. 793, 799; *Linde Air Products Co. v. Morse*

**IN GENERAL.**

122. 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; *General Investment Co. v. Lake Shore M. S. Ry. Co.*, Circuit Court of Appeals, December 8, 1920, 269 Fed. 235, 237, 238.

*Dry Dock & Repair Co.*, March 1, 1917, 239 Fed. 909, 927; *Standard Fashion Co. v. Magrane Houston Co.*, Circuit Court of Appeals, June 28, 1918, 251 Fed. 559; *United States v. Colgate & Co.*, October 29, 1918, 253 Fed. 522, 525, 527; and *Sears, Roebuck & Co. v. Federal Trade Commission*, Circuit Court of Appeals, April 29, 1919, 258 Fed. 307, 311.

<sup>23</sup> 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 Graphophones Co.*, Mar. 4, 1918, 246 U. S. 8, and *ante*, annotations to Federal Trade Commission Act, pars. 83-90, pp. 480-482.

WEBB ACT.<sup>32</sup>

[Approved Apr. 10, 1918.]

[PUBLIC—No. 126—65TH CONGRESS.]

[H. R. 2316.]

AN ACT To promote export trade, and for other purposes.

## Sec. 1. DEFINITIONS.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

"Trade within the United States."

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.

"Association."

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.

"TRADE WITHIN THE UNITED STATES."

Commission Act, pars. 39-43 (pp. 462, 463), and annotations

to Clayton Act, pars. 47-51 (pp. 497-499):

Sec. 2. ASSOCIATION FOR OR AGREEMENT OR ACT MADE OR DONE IN COURSE OF EXPORT TRADE—STATUS UNDER SHERMAN ANTITRUST LAW.

Association not illegal if organized for and engaged in export trade solely.

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

<sup>32</sup> The Reports have been checked for annotations through 273 Fed. 768 (Part 3, Advance Sheets, issued as of Sept. 1, 1921), and 41 Sup. Ct. 625, which disposes of all cases decided at the October term, 1920 (last decisions handed down on June 6, 1921).

hundred and ninety,<sup>32a</sup> shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in 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.

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,<sup>33</sup> shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

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,<sup>34</sup> shall be construed as extending to unfair methods of competition

<sup>32a</sup> For text of Sherman Act, see footnote on pp. 483-485.  
<sup>33</sup> See *ante*, p. 516.  
<sup>34</sup> See *ante*, p. 439 et seq.

**Sec. 4. FEDERAL TRADE COMMISSION ACT EXTENDED TO EXPORT TRADE COMPETITORS—Continued.**

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.

To furnish also information as to organization, business, etc.

Penalties, loss of benefit of secs. 2 and 3, and fine.

District attorneys to prosecute for recovery of forfeiture.

**SEC. 5.** That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and

expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

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."<sup>85</sup>

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. 343, 354, 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 Government in said suit.

<sup>85</sup> See *ante*, p. 439 et seq.



## APPENDIX II.

### DECISIONS OF THE COURTS ON PETITIONS TO ENFORCE OR REVIEW THE ORDERS OF THE COMMISSION OR TO ENJOIN IT FROM PROCEEDING.<sup>1</sup>

#### UNITED STATES v. BASIC PRODUCTS CO.

(District Court, W. D. Pennsylvania. September 9, 1919.)

No. 2214.

#### 1. UNITED STATES KEY No. 97—CAN NOT APPROPRIATE PATENT WITHOUT COMPENSATION.

There is no reservation in the patent laws of right in the United States as against the inventor, and it can not appropriate or use the invention without just compensation in any different way than it can appropriate or use any other article owned by a private citizen.

#### 2. COMMERCE KEY No. 48—FEDERAL TRADE COMMISSION CREATED UNDER POWER TO REGULATE INTERSTATE AND FOREIGN COMMERCE.

The Federal Trade Commission Act (Comp. St., pars. 8836a-8836k) was enacted by Congress in the exercise of its constitutional power to regulate interstate and foreign commerce.

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<sup>1</sup> With the exception of two cases, the period covered is from July 1 1920, to June 30, 1921. The two exceptions referred to are the case of the Basic Products Co. and the case of the Maynard Coal Co. (see p. 555, *infra*, for latter case), printed in full at this time as a matter of convenience because not heretofore so included in the Commission's Reports. Decisions on petitions to review handed down before the period above referred to will be found in Appendix II of Vol. II of the Commission's decisions.

Cases in which injunctions have been sought to restrain the Commission from proceeding under sec. 5 or in which it has been sought to defeat such a proceeding by appealing for a writ of certiorari to review the action of the Commission in denying motions to dismiss the proceeding for lack of jurisdiction, as of this writing (Oct. 15, 1921) are as follows: By injunction—Federal Trade Commission v. Nulomoline Co., in which the Circuit Court of Appeals for the Second Circuit on August 10, 1918, refused to interfere with the Commission's taking testimony, on the ground that the Commission's order requiring the same was interlocutory (memorandum opinion in 254 Fed. 983); T. C. Hurst & Son v. Federal Trade Commission, decided August 2, 1920, in the District Court for the Eastern District of Virginia (268 Fed. 874; see p. 565, *infra*), and Butterick Co. et al. v. Federal Trade Commission, in which the bills of four respondents in a proceeding before the Commission (Dock. 504) to enjoin the Commission from proceeding under sec. 5 were dismissed by

3. COMMERCE KEY NO. 57—TRADE-MARKS AND TRADE NAMES KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—POWERS OF FEDERAL TRADE COMMISSION WHERE INTERSTATE COMMERCE OR UNFAIR TRADE ARE NOT INVOLVED.

The Federal Trade Commission *held* without power to demand access to the books and papers of a corporation which manufactured a patent article by secret process, not alleged to be engaged in interstate or foreign commerce, nor charged with unfair competition, for the purpose of obtaining information for the Navy Department as to the cost of manufacture, annual production, capital invested, etc.

4. MANDAMUS KEY NO. 10—RIGHT TO DEMAND AND DUTY TO PERFORM NECESSARY.

Mandamus issues where, and only where, there is a right to demand, and a corresponding duty to perform, the act required.

(The syllabus is taken from 260 Fed. 472.)

At Law. Mandamus by the United States against the Basic Products Co. On demurrer to answer. Overruled.

R. L. Crawford, United States district attorney, of Pittsburgh, Pa.

Reed, Smith, Shaw & Beal, of Pittsburgh, Pa., for defendant.

*Orr, District Judge:*

To a petition filed by the Attorney General of the United States, at the request of the Federal Trade Commission, for a writ of mandamus upon the Basic Products Co., the latter has made answer at considerable length.

the Supreme Court of the District of Columbia on August 12, 1921 (no opinion), and in which case an appeal has been taken to the Court of Appeals of the District. On writ of certiorari—Minneapolis Chamber of Commerce et al. v. Federal Trade Commission, in which respondents in a proceeding before the Commission (Dock. 694) appealed to the Court of Appeals of the Eighth Circuit for writ of certiorari to review the Commission's action in denying motions to dismiss based on lack of jurisdiction, and which is pending in that court.

Cases in which injunctions have been sought to restrain the Commission from enforcing compliance with requests made under sec. 6 of the Federal Trade Commission Act, or in which mandamus proceedings have been instituted at the request of the Commission to enforce compliance with a request made under said section, are as follows: Injunctions—Maynard Coal Co. v. Federal Trade Commission, in which the Supreme Court of the District of Columbia on April 19, 1920, granted a preliminary injunction (see p. 555, *infra*), now awaiting trial, and Claire Furnace Co. et al. v. Federal Trade Commission, in which the same court on June 19, 1920, likewise granted a preliminary injunction (no opinion) and which is likewise awaiting trial. Mandamus proceedings—United States v. Bethlehem Steel Co., petition filed June 4, 1920, in the District Court for the Eastern District of Pennsylvania, and United States v. Republic Iron and Steel Co., petition filed June 7, 1920, in the District Court for the District of New Jersey, proceedings in both of which cases were stayed by the injunction secured in the Claire Furnace case, in which the two defendants in the mandamus proceedings were among the petitioners, and which proceedings consequently await decision of that case.

To that answer the plaintiff has demurred. It is upon the demurrer that this case is now before the court.

While all the material averments of the answer, which are well pleaded, must be taken as true, yet the important questions in the case can not be clearly outlined without reference to the petition as well, and without a statement of the particular grounds upon which the demurrer is based. The court therefore sets forth the substance of the pleadings, with quotations from the same, and with the use of italics where deemed proper for special emphasis.

With respect to the petition, it is to be noticed:

That there is no averment of any facts which show that the defendant is engaged in interstate commerce. The recital in the resolution of the Federal Trade Commission, which is hereinafter set forth, is not such averment.

The petition sets forth that on the 8th day of March, 1917, the Federal Trade Commission passed a resolution, and on the 11th of March following caused notice thereof and its demand in pursuance thereof to be served on the defendant, which notice and demand are both set forth at length in the petition. They are embodied in one paper duly executed by the Federal Trade Commission. The part of said paper which contains the notice recites the date of the passage of the resolution as aforesaid, that it was passed at a regular session of said Commission, and contains the resolution itself, which is as follows:

*Resolved*, That pursuant to the provisions of subdivision (a) of section 6 of the 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, the Commission proceed forthwith to gather and compile information concerning, and investigate the organization, business, conduct, practices, and management of the Basic Products Co., a corporation engaged in interstate commerce, and the relation of said Basic Products Co. to other corporations, individuals, associations, and partnerships: And be it further

*Resolved*, That pursuant to the provisions of section 9 of said act of September 26, 1914, L. W. Plowman and H. L. Maxey are hereby designated as duly authorized agents of the Federal Trade Commission to examine and copy any and all documentary evidence of whatsoever character concerning the organization, business, conduct, practices, and management of said Basic Products Co., and its relation to other corporations, individuals, associations, and partnerships: And be it further

*Resolved*, That a copy of this resolution be served on the said Basic Products Co., with a demand on behalf of the Federal Trade Commission that the said L. W. Plowman and H. L. Maxey, its agents, be permitted access to the books, papers, records, memoranda, and data of the said Basic Products Co. for the purpose of carrying out the direction of this resolution.

The part of that paper containing the demand is as follows:

Pursuant to the terms of said resolution the Federal Trade Commission hereby formally demands of you an opportunity to examine any documentary evidence in your possession which

relates to the organization, business, conduct, practices, and management of said Basic Products Co., a corporation, and its relation to other corporations and to individuals, associations, and partnerships, in order that copies may be made of any portions of said documentary evidence as appear to be relevant to the subject matter of said investigation.

The said Federal Trade Commission, by its duly authorized agents, viz, L. W. Plowman and H. L. Maxey, presents itself for the purpose of examination and making copies, if deemed advisable, of any documentary evidence within your possession or control and which relates to the above-entitled investigation now being conducted by it. *In particular, the Federal Trade Commission demands that it be permitted to examine and take copies, if deemed advisable, of all documentary evidence which relates to the production costs, annual production, and capital investment in the manufacturing of a commodity known as "Syndolag."*

The petition further avers that, upon the service of said notice and demand certain examiners, duly authorized by the Commission, presented themselves within the usual business hours at the office of the defendant in Pittsburgh—

*for the purpose of examination and making copies, if deemed advisable, of any documentary evidence within the possession and control of said defendant, which related to the investigation then being conducted by said Commission, as aforesaid, and particularly of such documentary evidence which related to the production costs, annual production, and capital investment in the manufacturing by defendant of a commodity known as "Syndolag"; but said defendant wholly failed and refused and still fails and refuses to permit said representatives of the Commission to examine said documentary evidence and make copies of same.*

The petition concludes with a prayer for a writ of mandamus.

The answer to said petition avers:

(1) That the defendant is the manufacturer of a patented article known as "Syndolag," which has been developed by the defendant after great expenditure of time and money, and which, among its other uses, is widely sold by defendant for repairing the bottoms of open-hearth steel furnaces, a purpose for which heretofore only imported Austrian magnesite could be used. Not only is the article patented but in the production thereof the defendant has developed certain refinements of method which are and have been kept secret by defendant and which constitute trade secrets of great value, as are also the cost accounts relating to the production of such article.

(2) On or about September 4, 1918, the Navy Department of the United States ordered from defendant 250 tons of Syndolag, for which defendant quoted a price of \$35 per ton, which was then the usual and ordinary price, but the Navy Department refused to agree to such price, and required such material to be billed at the tentative price of \$30 per ton. Pursuant to such order the defendant shipped to the said department 64.9 tons of said ma-

terial. Subsequently thereto, after the armistice with Germany was signed, the balance of said order was canceled by the Navy Department and the defendant waived any claim against the United States by reason of such cancellation.

(3) During November and December, 1918, and January and February, 1919, repeated demands were made by the Navy Department for affidavits from defendant showing defendant's costs of production of said article for the pretended reason of enabling the Navy to decide upon the price which it would be willing to pay defendant for its product. Defendant then offered, and in the answer in this proceeding renews said offer, to accept any price for said material which the Navy Department may see fit to pay. While such demands were being made by the said department, the latter, nevertheless, on December 14, 1918, and January 19, 1919, paid defendant at the rate of \$30 per ton for all Syndolag delivered as aforesaid. The defendant, prior to the filing of the answer in the present proceeding, offered, and in the said answer renews such offer, to return to said department or to the Treasurer of the United States as directed, any part of such price which is in excess of the price which the Navy Department, in its discretion, sees fit to pay for such product, or, should the Navy Department be unwilling or unable to fix such price, to refund to the Navy Department or to the Treasurer of the United States as directed, the whole amount received by defendant for such product.

(4) That the foregoing offers have been continuously made by defendant, yet under the pretense of fixing a price therefor the aforesaid demands for affidavits have been made by the Navy Department without reason or just cause. When the defendant finally refused to furnish such affidavits, the Navy Department's said demands were then taken up by the Federal Trade Commission, at the request and for the purpose of the Navy Department, in an effort to secure for the Navy Department such information through an assertion of the powers of the Federal Trade Commission. Such Trade Commission did, on March 1, 1919, send examiners to defendant's plant with the following communication:

FEDERAL TRADE COMMISSION,  
*Washington, March 1, 1919.*

BASIC PRODUCTS Co., *Kenova, W. Va.*

GENTLEMEN: This will serve to introduce Messrs. L. W. Plowman and H. L. Maxey, examiners of the Federal Trade Commission.

At the request of the Navy Department, the Federal Trade Commission has undertaken to ascertain the cost of producing the product known as "Syndolag." The commission also desires to ascertain the investment involved in the production of this product. It will, therefore, be necessary for its examiners to have

full access to your books and records, including not only your cost sheets, but your profit-and-loss statement and balance sheet. The period to be covered is the year 1918.

The commission requests your prompt cooperation with its examiners.

Very truly, yours,

(Signed)

FEDERAL TRADE COMMISSION,  
FRANCIS WALKER,  
*Chief Economist.*

L. H. H.

(5) No complaint has at any time been filed or entered against defendant by the Government, or by any citizen, in regard to the organization, business, trade practices, or conduct of the defendant in any respect, nor has the defendant been guilty of unfair competition, nor has it been charged therewith.

(6) The defendant has refused, and, unless required by court, will continue to refuse to surrender its trade secrets as aforesaid to any such examiners, or to any other representatives of said Trade Commission, or said Navy Department.

(7) The defendant charges that the demand of said Trade Commission is unlawful, unconstitutional, and void, for the following reasons:

(a) It is in direct violation of the provisions of the act creating said Trade Commission (act Sept. 26, 1914, c. 311, 38 Stat. 721 [Comp. St. 8836f]), section 6 whereof forbids the publication of trade secrets, whereas the demand upon defendant by said Trade Commission affirmatively shows that the purpose of said "investigation" is the ascertainment of trade secrets and the disclosure of information thereof to the Navy Department.

(b) That in the absence of charges or complaints against defendant, said Trade Commission is without power or authority to make the "investigation" demanded.

(c) That the access to defendant's properties and records demanded by said Trade Commission and by the petition of the Attorney General would constitute an unreasonable search and seizure, from which defendant is entitled to protection by the fourth amendment of the Constitution of the United States.

(d) That the access to defendant's properties and records demanded by said petition would constitute a taking of the property of the defendant without due process of law, in violation of the fifth amendment of the Constitution of the United States.

The reasons in support of the demurrer filed by the plaintiff are:

(1) A general demurrer that the answer is insufficient and irresponsible.

(2) That the defendant company has no standing to question the right of the plaintiff to a mandamus on the ground that no individual complaint or information has

been made against it. That the right of the plaintiff is the right of original investigation conferred upon the Federal Trade Commission by Congress.

(3) That any reason which the defendant might have to withhold its books, etc., from inspection should have been presented to the Trade Commission and not to the court.

(4) There is no attempt in this proceeding to take the properties or records of the defendant without due process of law, because the plaintiff in filing this proceeding is acting according to due process of law, and not in violation of any constitutional provision or any law thereunder.

In view of the Federal Trade Commission's letter of March 1, 1919, its resolution of the 8th day of the same month, and its notice and demand under date of the 11th of the same month, it plainly appears that said Commission has undertaken to ascertain the cost of producing a product which is the subject of a patent, and to ascertain also the annual production thereof, and the capital invested in the manufacture thereof. Why it has undertaken to do that is explained by the averments in the answer which must be taken as true. The purpose of such investigation is that the Commission can give information as to the results of its investigation to the Navy Department. It would seem that it was intended by the Commission to ascertain what is the just compensation which the Navy Department should pay for acquiring a right to such patented article, as is to be inferred from the following quotation from the brief of counsel on behalf of the plaintiff:

It is inconceivable that the ascertainment of the cost of the production of a commodity produced by defendant under a process patent which gives it a legal monopoly in the production of that product could work any hardship upon the defendant; it has an exclusive property in the patented invention which can not be appropriated or used by the Government itself without just compensation (30 Cyc., 818), and certainly an orderly proceeding to ascertain what is just compensation in a given case could not violate the due process clause of the Constitution or any other provision.

Under the constitutional power vested in Congress "to promote the progress of science and useful arts," letters patent of the United States secure to inventors the exclusive right to their discoveries. There is no reservation of right in the United States as against the inventor. The United States can not appropriate or use the invention without just compensation, in any different way than it can appropriate or use any other article owned by a private citizen. (*James v. Campbell*, 104 U. S., 356; 26 L. Ed., 786.)

The act of Congress under which the Federal Trade Commission has proposed to investigate the cost of producing a patented product and perhaps the amount of

compensation which should be paid by the United States, in order that the Navy might acquire the same, does not in terms justify such proceeding. The act is aimed at unfair methods of competition in commerce. This is clearly seen by the first paragraph of section 5 (Comp. St., par. 8836e), which consists of this language:

That unfair methods of competition in commerce are hereby declared unlawful.

That provision is qualified by the meaning given in the act to the word "commerce." In section 4 it is provided that the word "commerce," when found in the act, 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.

By applying that definition, then, to said first paragraph of section 5, we ascertain that it was the intent of Congress, by the passage of the act, to exercise some of the powers vested in it by the Constitution to regulate interstate and foreign commerce.

The second paragraph of section 5 contains the expression of a general power conferred upon and a general duty imposed upon the said Commission in these words:

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.

Following that broad provision there are set forth many powers and duties. The remaining paragraphs of section 5 relate to complaints against persons, partnerships, or corporations; the methods of proceeding upon such complaints; the findings of fact by the Commission, which "if supported by testimony shall be conclusive," and methods of enforcement of the orders of said commission through the aid of the courts.

As appears from the resolution of the Commission hereinabove set forth, the provisions of section 5 are not relied upon as justification for the Commission's action in the present case. The Commission relies upon subdivision (a) of section 6 of the act. Section 6 contains a further statement of particular powers vested in the Commission, and appears to authorize proceedings in which no complaints against any person, partnership, or corporation are required to be served. The opening of that section, including subdivision (a), is as follows:

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 com-



merce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

The substance only of the remaining subdivisions of section 6 need be stated:

(b) The Commission may require detailed reports from such corporations under oath.

(c) May investigate whether a final decree, intended to restrain any violation of the antitrust acts, is being carried out, and upon the application of the Attorney General are required to do so.

(d) Upon direction of the President or either House of Congress the Commission shall investigate alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General the Commission shall investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts.

(f) The Commission may make public information obtained, "except trades secrets and names of customers," and may submit recommendations to Congress for additional legislation.

(g) May from time to time classify corporations and make rules and regulations for the purpose of carrying out the provisions of the act.

(h) The Commission may investigate trade conditions in and with foreign countries.

The remaining sections of the act have little to do with the matter now before the court, yet their provisions may tend to assist the court in reaching the proper conclusion.

Section 7 (sec. 8836g) authorizes the court, in any suit in equity brought by the Attorney General, as provided in the antitrust acts, after the conclusion of the testimony therein, if the court be of opinion that the plaintiff is entitled to relief, to refer said suit to the Commission as a master in chancery to formulate a decree. Section 8 (sec. 8836h) provides that, when directed by the President, the several departments and bureaus of the Government shall furnish, upon its request, papers and information in their possession relating to any corporation subject to the provisions of the act. Section 9 (sec. 8836i) gives the Commission power to secure testimony, issue subpoenas, and compel the attendance of witnesses and the production of documentary evidence from any place in the United States, at any designated place of hearing, which by section 3 (sec. 8836c) may be "in any part of the United States." Such section also authorizes the district court to enforce obedience to subpoenas issued by the Commission and gives the district courts of the United States jurisdiction to issue writs of mandamus upon the application of the Attorney General, commanding any person or corporation to comply with the provisions of this act. Section 10 (sec. 8836j) provides the penalties for failure to comply with the provisions of the act or with the orders of the Commission. The punishment of any person disobeying a subpoena is by fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more

than one year, or by both. The punishment of any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required, or in any account, record, or memorandum kept by any corporation subject to this act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appurtenant 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 within its possession or within its control shall be subject, upon conviction, 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. If any corporation required by the act to file any report shall fail to do so within the time fixed by the Commission and such failure shall continue for 30 days after notice of such default, such corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure. There follows, then, a provision in said section for the punishment of any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority unless directed by the court.

From the foregoing review of the act it is plain that Congress intended to give the Commission a power unprecedented in its scope. In the argument on behalf of the plaintiff it was insisted that under the act the Commission was given the right to investigate any question having to do with any business of any corporation, except banks and common carriers subject to the control of the Interstate Commerce Commission, to conduct a hearing at any point in the United States, and compel there the attendance of any witnesses and the production of any records from any other point in the United States. There was no suggestion of the limitations to be found in the acts themselves other than the limitation just mentioned. In other words, it was probably assumed that every corporation with respect to which the Commission intended to conduct an investigation was engaged in interstate commerce within the meaning of the act. In the argument, as well as in the petition, there was lacking the assertion of facts which would bring the defendant within the terms of the act of Congress. Nowhere has it been made to appear that the defendant is 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.

The following quotation from the opinion of Judge Jackson, *In re Greene* (C. C.), 52 Fed. 104-113, contains not only a definition but an elaboration thereof, which suggests not only the limitations upon the power of Congress but also possibilities of the existence of activities by entities, corporate or otherwise, which might be brought within the jurisdiction conferred by the act upon the Federal Trade Commission:

Commerce among the States, within the exclusive regulating power of Congress, "consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities." *County of Mobile v. Kimball*, 102 U. S. 691-702 [28 L. Ed. 238]; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 203, 5 Sup. Ct. 826 [29 L. Ed. 158]. In the application of this comprehensive definition, it is settled by the decisions of the Supreme Court: That such commerce includes, not only the actual transportation of commodities and persons between the States, but also the instrumentalities and processes of such transportation. That it includes all the negotiations and contracts which have for their object, or involve as an element thereof, such transmission or passage from one State to another. That such commerce begins, and the regulating power of Congress attaches, when the commodity or thing traded in commences its transportation from the State of its production or situs to some other State or foreign country, and terminates when the transportation is completed and the property has become a part of the general mass of the property in the State of its destination. When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another State for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another State. At that time the power and regulating authority of the State ceases, and that of Congress attaches and continues, until it has reached another State, and becomes mingled with the general mass of property in the latter State. That neither the production or manufacture of articles or commodities which constitute subjects of commerce, and which are intended for trade and traffic with citizens of other States, nor the preparation for their transportation from the State where produced or manufactured, prior to the commencement of the actual transfer, or transmission thereof to another State, constitutes that interstate commerce which comes within the regulating power of Congress, and, further, that after the termination of the transportation of commodities or articles of traffic from one State to another, and the mingling or merging thereof in the general mass of property in the State of destination, the sale, distribution, and consumption thereof in the latter State forms no part of interstate commerce. *Pensacola Tel. Co. v. Western Union Tel. Co.*, 96 U. S. 1 [24 L. Ed. 708]; *Brown v. Houston*, 114 U. S. 622, 5 Sup. Ct. 1091 [29 L. Ed. 257]; *Coe v. Errol*, 116 U. S. 517-520, 6 Sup. Ct. 475 [29 L. Ed. 715]; *Robbins v. Taxing Dist.*, 120 U. S. 497, 7 Sup. Ct. 592 [30 L. Ed. 694]; and *Kidd v. Pearson*, 128 U. S. 1, 9 Sup. Ct. 6 [32 L. Ed. 346]. In the latter case the Supreme Court pointed out the distinction between commerce and the subjects thereof, and held that the manufacture of distilled spirits, even though they were intended for export to other States, was not commerce, falling within the regulating powers of Congress.

Imagination, if not experience, can suggest that persons, partnerships, and corporations may be engaged in interstate commerce by the transportation of merchandise solely by water; that their activities may give them their income from lighterage; or they may be engaged in the sole business of forwarding goods, with no interest in the vessels or wagons on which they are transported. The foregoing are merely illustrations of activities which may perhaps be within the scope of the powers granted to the Commission by the act as found in the fifth section thereof.

Imagination, however, can not suggest such an extension of constitutional limitation as may justify the investigation undertaken by the Commission in this case. Indeed, so far as the matter has been brought to the attention of the court, no such assertion of power has ever been made to the courts. Investigation under subdivision (a), section 6, is limited to corporations engaged in interstate commerce. The defendant is engaged in manufacture.

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:

No distinction is more popular to the common mind or more clearly expressed in economic and political literature than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. \* \* \* If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate more or less clearly an interstate or foreign market? Does not the wheat grower of the Northwest and the cotton planter of the South plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be local in all the details of their successful management. It is not necessary to enlarge on, but only to suggest the impracticability of such a scheme when we regard the multitudinous affairs involved and the almost infinite variety of their minute details.

In *Hammer v. Dagenhart*, 247 U. S. 251, 38 Sup. Ct. 529, 62 L. Ed. 1101, Ann. Cas. 1918E, 724, the Supreme Court held an act of Congress to be unconstitutional, as exceeding the commerce power of Congress and invading the powers reserved to the States, which act was intended to prohibit transportation in interstate commerce of goods made at a factory in which children of tender years might be employed. In that case the court again emphasizes in the strongest language that Congress has a regulatory power over interstate transportation and its incidents, but that the production of articles intended for interstate commerce is a matter of local regulation; and it appears from the opinion of the court (247 U. S. 273, 38 Sup. Ct. 532, 62 L. Ed. 1101, Ann. Cas. 1918E, 724) that argument was made that Congress had authority to control the interstate shipments of child-made goods in order to prevent unfair competition which would operate unjustly upon those who were forbidden by some States to employ child labor, and the court uses this language:

There is no power vested in Congress to require the States to exercise their police power so as to prevent possible unfair competition. Many causes may cooperate to give one State, by reason of local laws or conditions, an economic advantage over others. The commerce clause was not intended to give to Congress a general authority to equalize such conditions.

Counsel for the defendant urges upon this court the necessity of declaring section 6 of the Trade Commission Act to be unconstitutional, not only "in so far as it authorizes investigations and compulsory disclosures of matters which are beyond the commerce power of Congress," but also "in so far as it attempts to authorize a search or seizure by an administrative agency of the Government without charge or suspicion of wrongdoing." While the contention of counsel is probably sound, this court does not deem it necessary to go further than to hold that the commission have not the power to carry on investigation which they have assumed in the present case.

An incident of such investigation is the ascertainment of trade secrets. It is plain that the cost of manufacturing a patented product to which the manufacturer has the exclusive right may be a trade secret, a species of property of great value. This is also true of refinements of method in producing the same. The act prohibits the disclosure of trade secrets. The assumption that no such disclosure will be made disappears before the expressed intention to give the information to the Navy Department. We have, then, a contemplated search and seizure, and a contemplated taking of private property for public use, without due process of law, which are violative of the fourth and fifth amendments of the Constitution.

With respect to the third reason in support of the demurrer, little need be said. The act itself authorizes a petition for mandamus in aid of the commission.

Mandamus issues where, and only where, there is a right to demand, and a corresponding duty to perform, the act required. (19 Standard Encyclopedia of Procedure, 128.)

It was never intended that the extent of a free man's duty to perform should be determined by those who demand performance.

The demurer must be overruled, and the petition for a writ of mandamus must be refused.

### THE MAYNARD COAL CO. v. FEDERAL TRADE COMMISSION.\*

(Supreme Court of District of Columbia. April 19, 1920.)

#### COMMERCE—POWER OF CONGRESS TO DEMAND INFORMATION AS TO THE INTRASTATE COMMERCE OR PRODUCTION OF CORPORATIONS ENGAGED IN INTERSTATE COMMERCE.

That there is a radical distinction between production and commerce is clear, and where a corporation is not an instrumentality of interstate commerce, the visitatorial power of Congress over corporations engaged in interstate commerce does not embrace the power to demand information, either as to their intrastate commerce or their production, not demanded for its bearing upon a possible violation of law.

#### FEDERAL TRADE COMMISSION—POWER UNDER SECTION 6 OF FEDERAL TRADE COMMISSION ACT TO DEMAND INFORMATION AS TO THE INTRASTATE COMMERCE OR PRODUCTION OF CORPORATIONS ENGAGED IN INTERSTATE COMMERCE.

The Federal Trade Commission has no power under section 6 of the Federal Trade Commission Act to demand information as to the intrastate commerce or the production of corporations engaged in interstate commerce, not demanded for its bearing upon a possible violation of law, since the corporations referred to in the act are, by its terms, limited to those engaged in interstate and foreign commerce, and all the powers vested in the Commission should be construed in the light of such limitation.

BAILEY, *Judge*.

This is an application for an injunction to restrain the Federal Trade Commission from taking steps to collect a penalty for failure on the part of the plaintiff, the Maynard Coal Co., to make certain reports called for by the Commission. The bill is supported by several affi-

\* The case, following the granting of a preliminary injunction as set forth in the opinion and decision herein printed, is pending trial as of this writing (Oct. 15, 1921) in the Supreme Court of the District of Columbia. The same court similarly restrained the Commission from enforcing a request made under sec. 6 in the case of *Claire Furnace Co. et al. v. Federal Trade Commission* (June 19, 1920, no opinion), which case is also awaiting trial.

davits of expert accountants. The defendant Commission has filed its answer, but on account of insufficient verification, it can not be treated as an affidavit. It has also filed with its answer several affidavits, which will be noticed hereafter.

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, for each calendar month of the year 1920 and until further notice. The information and reports required are very full and detailed as to production, sales, management, financial condition, depreciation, etc., and all to be calculated as prescribed in the specifications. The plaintiff claims, and from the affidavits filed such appears to be the fact, these reports can not be made without a large change in the plaintiff's method of bookkeeping and accounting, and at a very considerable expense.

The Commission claims that it may require these reports under the authority placed in it by the act of Congress creating the Commission, approved September 26, 1914, and that Congress has the authority to so empower the defendant under the clause known as the Commerce Clause of the Constitution of the United States.

Congress shall have power \* \* \* to regulate commerce with foreign nations and among the several States with the Indian Tribes.

The parts of the Federal Trade Commission Act pertinent to this inquiry are substantially as follows:

Commerce is defined, section 4, as "commerce among the several States or with foreign nations, or in any Territory of the United States or with foreign nations, 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 provides that unfair methods of competition in commerce shall be unlawful, and empowers the Commission to take steps to prevent such unfair methods and prescribes the procedure for carrying out such purpose.

Section 6 of the act provides that the Commission shall 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 com-

merce, excepting banks and common carriers subject to the act to regulate commerce, and its relations to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable time as the Commission may prescribe, unless additional time be granted in any case by the Commission.

Subsection *c* authorizes the Commission, when a final decree has been entered against a corporation under the antitrust acts, to investigate the manner in which the decree is being carried out.

Subsection *c* authorizes the Commission, upon direction of the President or either House of Congress, to investigate alleged violation of the antitrust acts.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient 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 for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

The defendant in its answer admits "that no complaint had been filed by or before it charging the plaintiff with unfair methods of competition or with the violation of the Federal Trade Commission Act or the antitrust acts, and admits that the information sought to be secured from the plaintiff may not throw any light or have any bearing upon any possible violation of any of the acts aforesaid, but 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."

The authority of Congress to enact this legislation is claimed under the power to regulate commerce above set out. The reports demanded of the plaintiff are not limited to questions connected with the shipment of coal in interstate commerce or the contracts in reference to, or the prices of coal so shipped, but relate almost entirely



to the mining of coal and the price at which it is sold, and the financial condition and operations of the company, and all without any attempt to limit the inquiry to matters pertaining to the coal shipped in interstate commerce. In fact 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 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."

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.

That there is a radical distinction between production and commerce is clear.

In *Kidd v. Pearson*, 128 U. S. 1, Mr. Justice Lamar said (p. 20):

Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation. The legal definition of the term, as given by this court in *County of Mobile v. Kimball*, 102 U. S. 691, 702, is as follows: "Commerce with foreign countries and among the States, strictly considered, consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as purchase, sale, and exchange of commodities." If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. For is there one of them that does not contemplate, more or less clearly, an interstate or foreign market? Does not the wheat grower of the Northwest, and the cotton planter of the South, plant, cultivate, and harvest his crop with an eye on the prices at Liverpool, New York, and Chicago? The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be local in all the details of their successful management.

In *United States v. Knight*, 156 U. S. 1, page 12, Mr. Chief Justice Fuller said:

Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but

this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it and affects it only incidentally and indirectly. Commerce succeeds to manufacture and is not a part of it.

In *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, which involves the Antitrust Act of July 2, 1890, Mr. Justice Peckham, after holding that Congress under the power to regulate interstate commerce could regulate any agreement or combination that operated upon the sale, transportation, and delivery of an article of interstate commerce, on page 27, said:

Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce. It does not acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate. The latter it can regulate, while the former is subject alone to the jurisdiction of the State. The combination herein described covers both commerce which is wholly within a State, and also that which is interstate.

In regard to such of these defendants as might reside and carry on business in the same State where the pipe provided for in any particular contract was to be delivered, the sale, transportation, and delivery of the pipe by them under that contract would be a transaction wholly within the State, and the statute would not be applicable to them in that case. They might make any combination they chose with reference to the proposed contract, although it should happen that some nonresident of the State eventually obtained it.

In *Delaware, Lackawanna & Western Railroad Co. v. Yurkonis*, 238 U. S. 439, a case involving the Federal Employers' Liability Act, Mr. Justice Day, page 444, said:

The averments of the complaint as to the manner of the receiving of the injury by plaintiff showed conclusively that it did not occur in interstate commerce. The mere fact that the coal might be or was intended to be used in the conduct of interstate commerce after the same was mined and transported did not make the injury one received by the plaintiff while he was engaged in interstate commerce. The injury happening when the plaintiff was preparing to mine the coal was not an injury happening in interstate commerce, and the defendant was not then carrying on interstate commerce—facts essential to recovery under the Employers' Liability Act.

In *Coe v. Errol*, 116 U. S. 517, it was held that logs cut in New Hampshire and hauled to Errol, N. H., to be transported to Maine were not in interstate commerce. Mr. Justice Bradley, page 525, said:

When the products of the farms or forest are collected and brought in from the surrounding country to a town or station serving as an entrepôt for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but

as a part of the general mass of property of that State, subject to its jurisdiction and liable to taxation there, if not taxed by reason of their being intended for transportation, but taxed without any discrimination in the usual way and manner in which such property is taxed in the State.

On page 528, he said :

It is true, it was said in the case of the *Daniel Ball*, 10 Wall. 557, 565: "Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced." But this movement does not begin until the articles have been shipped or started for transportation from the one State to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence is no part of the journey. That is all preliminary work, performed for the purpose of putting the property in a state of preparation and readiness for transportation. Until actually launched on its way to another State, or committed to a common carrier for transportation to such State, its destination is not fixed and certain. It may be sold or otherwise disposed of within the State, and never put in course of transportation out of the State. Carrying from the farm or forest to the depot is only an interior movement of the property, entirely within the State, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; is no part of the exportation itself. Until shipped or started on its final journey out of the State it is a matter altogether *in fieri*, and not at all a fixed and certain thing.

In order for the Federal Trade Commission to have the power to require the plaintiff to make reports as to the mining of coal and as to its intrastate shipments, it must appear that this information is necessary to or connected with some object over which the general Government has power. There is no claim made that there is any proceeding pending involving the Antitrust Act, or unfair methods of competition, or under the Clayton Act, but in its order defendant demands reports on all the business of the plaintiff.

The defendant relies upon the visitorial powers of Congress over corporations. In this connection it must be borne in mind that the power of Congress over an instrumentality of commerce, such as a common carrier, is far different from its powers over an ordinary business corporation which merely ships its products or a portion of its products over such carrier. In fact as said by Mr. Justice Holmes in *Smith v. Interstate Commerce Commission*, 245 U. S. 33, on page 45:

It is not far from true—it may be it is entirely true—as said by the Commission [referring to the Interstate Commerce Commission] that there can be nothing private or confidential in the activities and expenditures of a carrier engaged in interstate commerce.

Apart from the fact that plaintiff is a corporation it is clear that Congress could not compel the production of the private books and papers of a citizen, except in the progress of judicial proceedings. *Kilbourne v. Thompson*, 103 U. S. 168; *Harriman v. Interstate Commerce Commission*, 211 U. S. 407.

Mr. Justice Field, then sitting on the circuit court, in the case of *In re Pacific Railway Commission*, 32 Fed. Rep. 241, said (p. 250):

And in addition to the inquiries usually accompanying the taking of a census there is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment, it may be important to possess. It may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business, and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters. In the pursuit of knowledge it can not compel the production of the private books and papers of the citizen for its inspection, except in the progress of judicial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence these books and papers contain.

And again on page 254:

But in accordance with the principles declared in the case of *Kilbourne v. Thompson*, and the equally important doctrines announced in *Boyd v. U. S.*, the Commission is limited in its inquiries as to the interest of these directors, officers, and employees in any other business, company, or corporation to such matters as these persons may choose to disclose. They cannot be compelled to open their books and expose such other business to the inspection and examination of the Commission. They were not prohibited from engaging in any other lawful business because of their interest in and connection with the Central Pacific Railway Co., and that other business might as well be the construction and management of other railroads as the planting of vines, or the raising of fruit, in which some of these directors and officers and employees have been in fact engaged. And they are entitled to the same protection and exemption from inquisitorial investigation into such business as any other citizen engaged in like business.

But the Commission claims that, inasmuch as the plaintiff is a corporation, it has the authority claimed under the visitorial power of Congress. That the power sought is visitorial in its nature is clear, for in order to give the information and make the reports required, it will be necessary (that it is, so appears from the affidavits on file) for the plaintiff to keep records and books in addition to those now kept by it and by other corporations engaged in a like business, at a considerable expense, and to make monthly reports based on calculations made from such records. This is not the simple obligation of a witness under a subpoena duces tecum, to answer questions and to produce books and records for inspection, but in addition to keep records and make calculations and reports. Such a burden cannot be imposed upon an ordinary witness. *Northern Pacific Railway Co. v. Keyes*, 91 Fed. Rep. 47; 4 Wigmore, section 2203, page 2989.

The Commission contends that the order served upon the plaintiff does not undertake to prescribe methods of bookkeeping, nor to keep additional records, but under the allegations of the bill and the affidavits filed I am of the opinion that this contention cannot be sustained. The plaintiff cannot comply with the order of the Com-

mission without changing its methods of bookkeeping. That the act undertakes to vest such powers (certainly as to matters connected with interstate commerce) in the Commission is clear from section 10 of the act, which provides penalties for any person who shall willfully "neglect or fail to make or cause to be made, any false entry in any account, records, or memorandum kept by any corporation subject to this act, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation." These powers could only be justified under visitatorial power.

It has been held that Congress has such visitatorial power over corporations engaged in interstate commerce in *Wilson v. U. S.*, 221 U. S. 361, and in *Ellis v. Interstate Commerce Commission*, 237 U. S. 431, but in these cases the power was limited to that portion of the business which was under the control of the Federal Government. No such power would seem to exist, however, as to other matters, and the two cases referred to were cases in which subpoena duces tecum had been issued, requiring the production of a corporation's books in the one case before a grand jury investigating charges of fraudulent use of the mail and in the other before the Interstate Commerce Commission. And in the latter case the court, through Mr. Justice Holmes, on page 444 (237 U. S.), said:

If the price paid to the Armour Car Lines was made as a cover for a rebate to Armour & Co., or if better cars were given to Armour & Co. than to others, or if, in short, the act was violated, the railroads are responsible on proof of the fact. But the only relation that is subject to the Commission is that between the railroads and the shippers. It does not matter to the responsibility of the roads whether they own or simply control the facilities, or whether they pay a greater or less price to their lessor. It was argued that the Commission might look into the profits and losses of the Armour Car Lines (one of the matters inquired about) in order to avoid fixing allowances to it at a confiscatory rate. But the Commission fixes nothing as to the Armour Car Lines except under section 15 in the event of which we shall speak.

The appellant's refusal to answer the series of questions put was not based upon any objection to giving much of the information sought, but on the ground that the counsel who put them avowed that they were the beginning of an attempt to go into the whole business of the Armour Car Lines—a fishing expedition into the affairs of a stranger for the chance that something discreditable might turn up. This was beyond the powers of the Commission. In *re Pacific Railway Commission*, 32 Fed. Rep., 241; *Interstate Commerce Commission v. Brinson*, 154 U. S. 447, 478, 479; *Harriman v. Interstate Commerce Commission*, 211 U. S. 407. The Armour Car Lines not being subject to regulation by the Commission its position was simply that of a witness interested in but a stranger to the inquiry, and the Commission could not enlarge its powers by making the company a party to the proceedings and serving it with notice. Therefore the matter to be considered here, subject to the qualification that we are about to state, is how far an ordinary witness could be required to answer the questions that are before the court.

In the case of a corporation doing a wholly intrastate business, could it be said that Congress had any visitatorial 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 and the intrastate commerce of such corporation. The visitatorial 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.

In *Hammer v. Dagenhart*, 247 U. S. 251, it is said (p. 260):

While the power to regulate commerce among the several States is in the same grant and in the same terms with the power over foreign commerce, yet there is a difference with respect to the extent of that power growing out of the difference in the relation of the United States to the two kinds of commerce, and the difference in the right of the citizen of the United States and the foreigner to engage therein. As to foreign commerce, the United States possesses and exercises all the attributes of sovereignty. As to interstate commerce, it exercises only that portion of sovereignty delegated to it.

And again, page 261:

However much the *Knight* case, 156 U. S. 1, may be weakened by later decisions, its distinction between production and commerce is still effective to prevent direct congressional regulation of production as distinguished from sale and transportation.

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. Doubtless the business of every coal-mining corporation, whether engaged in interstate business or not, to some extent affects interstate prices and commerce, but, as stated in *U. S. v. Knight*, 156 U. S. 1 (above), "The power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense." No sound reason is given why there is any difference in the business of coal mining of a corporation which ships its coal to another State and that of a corporation which does not. Interstate commerce is not affected any more in the one case than in the other.

In the case of *United States v. Basic Products Co.*, 260 Fed. Rep. 472, in which it was urged that section 6 of this act was unconstitutional, not only in so far as it authorized investigation and compulsory disclosure of matters which are beyond the commercial powers of Congress but also in so far as it attempted to authorize a search or seizure by an administrative agency of the Government with-

out charge or suspicion, Justice Orr of the District Court of the Western District, Pennsylvania, said:

While the contention of counsel is probably sound, this court does not deem it necessary to go further than to hold that the Commission has not the power to carry on investigation which it has assumed in the present case.

In the same decision he also said:

Imagination, if not experience, can suggest that persons, partnerships, and corporations may be engaged in interstate commerce by the transportation of merchandise solely by water; that their activities may give them their income from lighterage; or they may be engaged in the sole business of forwarding goods, with no interest in the vessels or wagons on which they are transported. The foregoing are merely the illustrations of activities which may perhaps be within the scope of the powers granted to the Commission by the act as found in the fifth section thereof.

Imagination, however, can not suggest such an extension of constitutional limitation as may justify the investigation undertaken by the Commission in this case. Indeed, so far as it has been brought to the attention of the court, no such assertion of power has ever been made to the courts. Investigation under subdivision (a), section 6, is limited to corporations engaged in interstate commerce. The defendant is engaged in manufacture.

I am of the opinion, therefore, that no such visitatorial power as that claimed by the Commission in the instant case has been vested in Congress by the Constitution, nor could Congress delegate such power to the Commission.

But did Congress undertake to vest such power in the Commission? It is the duty of the courts, if possible, to give the statute a construction which would not conflict with the Constitution. *Knight Templar Co. v. Jarmon*, 187 U. S. 197, 205.

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 orders the information which it has the power to demand can not be separated from that over which it has no control. While as to other matters, as stated in *In re Pacific Railway Commission, supra*, Congress may authorize the Commission to obtain information upon any subject which, in its judgment, it may be important for it to possess, it may not compel the production of such information in respect to matters over which the Federal Government has no control.

It follows, therefore, that the Commission can not compel the making of the reports which it has demanded of the plaintiff.

The plaintiff further contends that this power of the Commission has been taken away by presidential order.

Much proof in the form of affidavits has been introduced by the defendant to show contemporaneous constructions of this order, and that the power claimed by the Commission in this case was not taken from it. The order is ambiguous, but in view of my opinion as to the power of the Commission, it is not necessary to decide this question in passing upon the application for a preliminary injunction.

Section 10 of the act provides that—

if any corporation required by this act to file any annual or special report shall fail to do so 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.

The plaintiff has failed to file the report demanded and the Commission has notified it that steps will be taken to recover the penalty prescribed above. The jurisdiction of a court of equity is not questioned by the defendants, and as I am of the opinion that the Commission has not the power to exact the reports and information sought, the injunction prayed for will issue upon plaintiff executing bond with surety to be approved by the court in the penalty of \$5,000.

## T. C. HURST & SON v. FEDERAL TRADE COMMISSION ET AL.<sup>2</sup>

(District Court, E. D. Virginia, October 2, 1920.)

1. COMMERCE KEY No. 7—CONSTITUTIONAL LAW KEY No. 62, 240(1), 296(1)—EMINENT DOMAIN KEY No. 2(1)—TRADE COMMISSION ACT CONSTITUTIONAL.

Federal Trade Commission Act September 26, 1914, paragraphs 5, 6, 9, 10 (Comp. St., Pars. 8336e, 8336f, 8336i, 8336j), in authorizing the Commission to prevent unfair methods of competition in commerce by proceeding against any person, firm, or corporation believed to be using such unfair methods, with the right to have access to and require the production of documentary evidence, and after a hearing to order the respondent to cease and desist from using such methods, such order, however, being enforceable only by the Circuit Court of Appeals, in which a full transcript of the proceedings is required to be filed, and which is given exclusive jurisdiction to affirm, modify, or set aside the order, *held* not unconstitutional: (1) As beyond the constitutional power of Congress; or (2) as delegating

<sup>2</sup>Injunctions to restrain the Commission from proceeding under Sec. 5 were also sought, without success, in the cases of *Federal Trade Commission v. The Nulomoline Co.* (Court of Appeals for the Second Circuit, Aug. 16, 1918. Memorandum opinion in 254 Fed. 983) and *Butterick Co. et al. v. Federal Trade Commission* (Supreme Court of the District of Columbia, Aug. 12, 1921. No opinion), in which an appeal to the Court of Appeals of the District failed because not perfected within the necessary time.



legislative power to the Commission, because it is empowered to determine what shall constitute unfair methods of competition in commerce; or (3) because it attempts to regulate intrastate commerce; or (4) because the proceedings authorized discriminate between persons engaged in the same line of business and take the property of one without due process of law and without just compensation.

**2. TRADE-MARKS AND TRADE-NAMES KEY NO. 68—GIFTS OR ALLOWANCES TO CUSTOMER'S EMPLOYEE BY MERCHANT, WITHOUT KNOWLEDGE OF EMPLOYER, HELD UNFAIR.**

The Federal Trade Commission has the right to decide that gratuities or allowances by a merchant to an employee or agent of customer, without the knowledge or consent of the employer, is unfair, and may order persons giving the same to cease and desist therefrom.

**3. INJUNCTION KEY NO. 7—PROCEEDINGS BY TRADE COMMISSION WILL NOT BE ENJOINED.**

A District Court will not grant an injunction restraining the Federal Trade Commission from examining the books and records of a person charged with using unfair methods of competition in commerce, as authorized by Federal Trade Commission Act September 26, 1914, paragraph 9 (Comp. St., par. 8836i), in view of the fact that by section 5 (sec. 8836e) of the act the Circuit Court of Appeals is given exclusive jurisdiction to review proceedings of the Commission.

(The syllabus is taken from 268 Fed. 874.)

In Equity. Suit by T. C. Hurst & Son against the Federal Trade Commission and its members and counsel. On motion for preliminary injunction. Motion denied.

Henry Bowden and H. G. Cochran, both of Norfolk, Va., for complainants.

E. C. Alvord and Charles S. Moore, both of Washington, D. C., for defendants.

*WADDILL, District Judge:*

The bill in equity in this case is filed by the complainants, who are engaged in carrying on and conducting business as ship chandlers, supplying ships with provisions and supplies, and delivering such provisions and supplies to ships within the State of Virginia, against the above-named defendants, to enjoin and restrain them and each of them, their agents, servants, employees, and subordinates, from prosecuting a certain complaint inaugurated by the Commission pursuant to its order of the 29th of June, 1920, against the complainants, T. C. Hurst & Son, wherein it is averred and charged that the said T. C. Hurst & Son, at Norfolk, Va., while engaged in their business of furnishing merchandise and supplies, such as groceries, provisions, meats, deck, and engine supplies, for transportation in interstate and foreign

commerce, to ships engaged in commerce between the States of the United States, and between the United States and foreign countries, and upon foreign and American-owned vessels, and while so engaged, in direct competition with other firms, copartnerships, and corporations similarly engaged, gave captains, engineers, and other employees of vessels, without the knowledge and consent of the owners thereof, sums of money and other gratuities, as an inducement to influence such employees or owners to purchase supplies from the respondents, the complainants herein, which said acts were charged to be unfair methods of competition in commerce, within the intent and meaning of section 5 of the act of Congress of September 26, 1914, creating the Federal Trade Commission.

The said complainants further sought to enjoin and restrain the Commission, its members, agents, and attorneys, from enforcing, or attempting to enforce, or causing to be enforced against the complainants, its members, agents, servants, employees, or customers, any of the penalties, seizures, and forfeitures provided in the act of Congress aforesaid, creating the Federal Trade Commission, dated September 26, 1914, 38 Stat. L. 717, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and from arresting and prosecuting, or in any wise interfering with the proper business and affairs of the complainants, and from requiring them to produce before the Commission or its examiners or agents, the books, records, papers, and documents bearing on and showing their said business, and to enjoin and restrain the Commission and its representatives from examining said books, records, papers, and documents.

The complainants aver that sections 5, 6, 9, and 10 of the act creating the Commission are unconstitutional and void, (a) because beyond the powers vested in Congress by the Constitution; (b) because they delegate to the Commission legislative authority, in violation of Articles I and III and Amendment X of the Constitution; (c) because the Commission is empowered to define and determine what shall constitute "unfair method of competition in commerce"; (d) because the act attempts to regulate intra as well as interstate commerce; and (e) because the order and proceedings sought to be enjoined discriminates between persons engaged in the same line of business and takes away the property of one without due process of law and without just compensation in violation of the fifth, sixth, ninth, and tenth amendments of the Constitution without molesting the other, and for other alleged grievances more particularly and specifically set up in the bill of the complainants.

The importance of this case to the Government is manifest, as it seeks in effect to stay the hand and destroy the efficiency of one of the great commissions

created by Congress to deal with the matters committed to its authority and control. The constitutionality of the act itself is challenged, also the right of the Commission to decide what shall constitute unfair competition and of Congress to authorize it so to do, as well as the manner in which the Commission may proceed in the discharge of its duties to determine what is unfair competition, the specific complaint being that the Commission may not proceed against a particular person, firm, or corporation believed to be engaged in unfair competition, but must in the same proceeding include all other persons similarly engaged.

With a view of showing just what the Commission is empowered to do, and what authority and jurisdiction this court has to act in respect thereto, reference should be had to the provisions of the act of Congress in question. Section 5 of the act is as follows:

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

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

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. \* \* \* 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.

Any party required by such order of the Commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission as in the case of an application by the Commission for the enforcement of its order, and the findings of the Commission as to the facts, if supported by testimony, shall in like manner be conclusive.

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.

The above extracts from the act of Congress make it clear just what the powers of the Federal Trade Commission are. The method of procedure for carrying out and executing these provisions by the Commission is specific, as is also the effect of its decisions and the manner in which the same may be enforced. The purpose of the act is to make unfair methods of competition in commerce unlawful, and the Commission is empowered and directed to prevent persons, partnerships, or corporations, other than banks and common carriers subject to the act to regulate commerce, from using unfair methods of competition in commerce. The power granted is far-reaching in its results and of a most salutary character. Banks and common carriers were doubtless excepted from the provisions of the act, because each was subject to the direction and control of a separate commission largely similar to that of the Trade Commission.

The contention that the act of Congress is unconstitutional for any of the reasons specified is without merit, as it is manifestly within the power of Congress to legislate generally in respect to the burdens that may or may not be imposed upon foreign and interstate commerce, and it is also within its power to declare what would be fair and what unfair methods and dealings in relation thereto, and how the same should be ascertained and determined. The Commission is given full power and authority to investigate, make findings of fact, and render its judgment and order in relation thereto, and before the same is carried into effect, the judgment of the circuit court of appeals, the second highest court under the Government, is to be sought by the Commission, to enforce its order, and any party required by such order to cease and desist from using such method of competition may obtain a review of such order in the circuit court of appeals by filing its written petition praying therefor. The action of the circuit court of appeals is final, save that when its interposition is sought by the Commission, certiorari lies from its decision to the Supreme Court of the United States. The jurisdiction of the circuit court of appeals to enforce,

set aside, or modify orders of the Commission is exclusive. In all of the proceedings, whether before the Commission or the court, the amplest provision is made for notice to and full hearing of all parties interested, and for this court, for any of the reasons urged, to anticipate by injunction the action of the Commission and the judgment of the court charged under the law with the review thereof, would be clearly an usurpation of authority.

Counsel urgently insist that injunctive relief be afforded to prevent the seizure and inspection of the complainant's private papers, books, and records showing their business transactions, relating to the subject under investigation. While undoubtedly the relief sought may sometimes be afforded by injunction, still it does not seem to the court the proper remedy here, where the enforcement of the order sought to be enjoined is exclusively within the jurisdiction of the circuit court of appeals. *Wilson v. Lambert*, 168 U. S. 611, 618. From this court's action, as well in refusing as granting an injunction (Judicial Code, sec. 129), an appeal lies direct to that court, and it, or a judge thereof, would doubtless stay proceedings sought to be enjoined, where the appeal was from an order refusing an injunction, if in the judgment of the court such action should be necessary to meet the ends of justice.

For the reasons stated, and the court being further of opinion that the Commission acted entirely within its rights, of and concerning a matter liable to injuriously affect commerce, doth decline to grant the injunction prayed for.

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**NATIONAL HARNESS MFRS. ASSN. v. FEDERAL  
TRADE COMMISSION ET AL.<sup>3</sup>**

(Circuit Court of Appeals, Sixth Circuit, December 7,  
1920.)

No. 3289.

**1. COMMERCE KEY NO. 3—CONGRESS CAN PREVENT UNFAIR COMPETITION IN INTERSTATE COMMERCE.**

Congress has the power to declare, as it did by the Federal Trade Commission Act (Comp. St., pars. 8836a-8836k), that unfair methods of competition in interstate commerce are unlawful, and to require that their practice cease.

**2. CONSTITUTIONAL LAW NO. 80 (2)—TRADE-MARKS AND TRADE NAMES KEY NO. 80½, NEW, VOL. 8A KEY NO. SERIES—FEDERAL TRADE COMMISSION NOT GIVEN JUDICIAL POWERS OR INVALID EXECUTIVE POWERS.**

The authority given the Federal Trade Commission to determine what methods of competition a given trader employs, and, pro-

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<sup>3</sup> Reviewing order of the Commission in *Federal Trade Commission v. The Whole Sale Saddlery Assn. et al.*, 1 F. T. C. 335.

visically, to determine whether such methods are unfair, subject to right of review by the courts, does not confer on the Commission judicial powers or invalid executive or administrative authority, contrary to Constitution, Articles 1, 2, 3, in view of the fact that the Commission's determination is not only subject to review, but is enforceable only by the courts.

3. CONSTITUTIONAL LAW KEY NO. 42—PARTY CAN NOT COMPLAIN OF INVALID SECTIONS NOT INVOKED AGAINST HIM.

A petitioner, seeking review of an order by the Federal Trade Commission requiring petitioner to desist from certain practices, can not raise the question that the inquisitorial features of Federal Trade Commission Act, paragraphs 9, 10 (Comp. St., pars. 8836i, 8836j), violate constitutional amendment 4, which protects against unreasonable searches and seizures, where the Commission did not attempt to exercise against petitioner the powers given by those sections.

4. TRADE-MARKS AND TRADE NAMES KEY NO. 80½, NEW, VOL. 8A, KEY NO. SERIES—TRADE COMMISSION HAS JURISDICTION OVER INCORPORATED ASSOCIATION OF MANUFACTURERS; "CORPORATION."

Under Federal Trade Commission Act, paragraph 5 (Comp. St., par. 8836e), giving the Commission jurisdiction when it has reason to believe that any person, partnership, or corporation is guilty of unfair competition, the Commission has jurisdiction over methods of an association of manufacturers in a certain line, though the association is unincorporated, in view of section 4 of the act (sec. 8836d), defining a corporation as any company or association, incorporated or unincorporated, organized to carry on business for its own profit or that of its members.

(ED. NOTE.—For other definitions, see Words and Phrases, First and Second Series, Corporation.)

5. ASSOCIATIONS KEY NO. 20 (4)—BROUGHT INTO COURT BY SERVICE ON OFFICERS AND ACCESSIBLE MEMBERS.

A voluntary association having many members may be brought into court by service on its officers and on such of its members as are known and can be conveniently reached, sufficient being served to represent all the diverse interests.

6. TRADE-MARKS AND TRADE-NAMES KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—ASSOCIATION WHOSE MEMBERS ARE ENGAGED IN INTERSTATE COMMERCE IS SUBJECT TO JURISDICTION OF TRADE COMMISSION.

An unincorporated association of manufacturers in a certain line of business is subject to the jurisdiction of the Federal Trade Commission, if its members are engaged in interstate commerce, and interstate commerce is directly affected by the alleged unfair methods of competition.

7. TRADE-MARKS AND TRADE-NAMES KEY No. 80½, NEW, VOL. 8A  
KEY-NO. SERIES—METHODS OF COMPETITION WHICH SUBSTANTIALLY AFFECT CONDITIONS IN HARNESS TRADE HAVE PUBLIC INTEREST.

The activities of an association of harness manufacturers, which substantially affect conditions in the harness and saddlery trade, are such that proceedings by the Federal Trade Commission would be to the interest of the public, so that the Commission has jurisdiction thereof, under section 5 of the Federal Trade Commission Act (Comp. St., par. 8836e).

8. TRADE-MARKS AND TRADE-NAMES KEY No. 68—TRADE COMMISSION CAN PREVENT COERCION TO SEPARATE JOBBING AND RETAIL BUSINESS.

Attempts by an association of harness manufacturers and by a saddle maker's association to coerce the separation of the wholesale and retail harness dealers, by refusing to recognize those who engage both in the wholesale and retail trade as authorized jobbers, and to prevent the sale by manufacturers of accessories to such persons, are unlawful, and may be restricted by order of the Federal Trade Commission.

9. TRADE-MARKS AND TRADE-NAMES KEY No. 80½, NEW, VOL. 8A  
KEY-NO. SERIES—TRADE COMMISSION ACT IS PREVENTIVE.

The Federal Trade Commission Act (Comp. St., pars. 8836a-8836k) is intended to afford a preventive remedy, not a compensatory one, so that the suggestion that no damage has been shown by the practices complained of is no defense to proceedings before the Federal Trade Commission.

(The syllabus is taken from 268 Fed. 705).

Petition to Set Aside Order of the Federal Trade Commission.

Original petition by the National Harness Manufacturers' Association against the Federal Trade Commission and others, to review an order of the Commission requiring petitioner and its correspondents to cease certain alleged unfair methods of competition in interstate commerce. Order of Commission affirmed.

See, also, 261 Fed. 170.

Leonard Garver, jr., of Cincinnati, Ohio (Lorbach & Garver, of Cincinnati, Ohio, on the brief), for petitioner.

Marvin Farrington, of Washington, D. C. (Claude R. Porter and Marvin Farrington, both of Washington, D. C., and Walter B. Wooden, of Chicago, Ill., on the brief), for respondents.

Before Knappen, Denison, and Donahue, circuit judges.

KNAPPEN, *Circuit Judge*:

Original petition under section 5 of the Federal Trade Commission Act (Sept. 26, 1914, C. 311; U. S. Comp. Stat. 1916, secs. 8836a, et seq.) to review an order of the Com-

mission requiring petitioner and its correspondents to cease and desist from certain alleged unfair methods of competition in interstate commerce.

The proceeding was brought against both petitioner, The National Harness Manufacturers' Association of the United States of America (hereinafter called the Harness Manufacturers' Association or the petitioner), its officers and the members of its executive committee by name, as well as about 20 local associations composing the membership of the Harness Manufacturers' Association, and the Wholesale Saddlery Association of the United States (hereinafter called the Saddlery Association), its officers and the members of its executive committee by name, and a large number of named persons, firms, or corporations composing the membership of that association. The order to cease and desist included both associations. The Saddlery Association asks no review of the Commission's order.

The petitioner here assails that order on the grounds, first, that the Federal Trade Commission Act is unconstitutional; second, that the Commission had no jurisdiction in this particular case; and, third, that the order to cease and desist is not supported by the evidence.

1. The constitutionality of the act is assailed, first, as assuming—

to combine legislative, executive, and judicial powers and functions and to confer them upon one and the same administrative body, contrary to Articles I, II, and III of the Constitution, and because it assumes to authorize the Commission, which is ostensibly an administrative body, to deprive persons of their property without due process of law, contrary to the fifth amendment of the Constitution.

This proposition is to our minds without merit. Congress plainly has power to declare unfair methods of competition unlawful and to require that their practice cease. This Congress has done by the act in question. It with equal clearness has the power to authorize an administrative commission to determine (a) the question what methods of competition the given trader employs, and (b) provisionally, the mixed question of law and fact whether such methods are unfair. These questions being determined against the trader, the administrative requirement to cease and desist, prescribed by Congress, follows, as matter of course, but only provisionally. The Commission's determination of these questions is not final. Not only does the statute give a right of review thereon upon application by an aggrieved trader, to a Circuit Court of Appeals of the United States, but the Commission's order is not enforceable by the Commission but only by order of court. "It is for the courts, not the Commission, ultimately to determine as matter of law" what the words "unfair methods of competition" include. *Federal Trade Commission v. Gratz*, 253 U. S. 421, 40 Sup. Ct. Rep. 572, 575.



Throughout the proceedings, not only before the Commission but before the court, the trader is given the right and opportunity to be heard. The act delegates to the Commission no judicial powers, nor does it, in our opinion, confer invalid executive or administrative authority. *Buttfield v. Stranahan*, 192 U. S. 470; *Union Bridge Co. v. United States*, 204 U. S. 364; *Pennsylvania Railroad v. International Coal Co.*, 230 U. S. 184; *Coopersville Co. v. Lemon*—C. C. A. 6—163 Fed. 145, 147, et seq.; *National Coal Co. v. C. & N. W. Ry. Co.*—C. C. A. 7—211 Fed. 65. The criticism that the statute makes the Commission both judge and prosecutor is too unsubstantial to justify discussion. The constitutionality of the act, against objections similar to those presented here, has recently been sustained by the Circuit Court of Appeals of the seventh circuit in a considered and persuasive opinion. *Sears, Roebuck & Co. v. Federal Trade Commission*, 258 Fed. 307. None of the petitioner's citations contain, in our opinion, anything necessarily opposed thereto. Upon this record, we have no occasion to consider the construction or effect of the provision of the act which makes conclusive, if supported by testimony, the Commission's findings as to facts as distinguished from conclusions of law, or of mixed fact and law. In saying so, however, we must not be understood to intimate that the provision referred to is invalid.<sup>4</sup>

The act is also assailed as violating the fourth amendment to the Federal Constitution, which protects against "unreasonable searches and seizures," which petitioner asserts are provided for by the so-called inquisitorial feature of section 9, in the declaration 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"; a provision whose enforcement is provided for by section 10, which subjects any person to fine or imprisonment, or both, "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."

Of this criticism it is enough to say that the provisions in question of sections 9 and 10 are not before this court. The Commission has not attempted to exercise them. Section 9 otherwise contains complete provision for enforcing, by subpoena, the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under investigation. Beyond this the Commission has not gone. That one attacking a

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<sup>4</sup> See the discussion in *Buttfield v. Stranahan*, supra, at pp. 494 et seq.; also in *Union Bridge Co. v. United States*, supra, at pp. 377-387; also in *Coopersville Co. v. Lemon*, supra, at pp. 147 et seq. [Court's note.]

statute as unconstitutional must show that the alleged unconstitutional feature injures him is settled by a long line of authorities, among which are *Tyler v. Judges*, 179 U. S. 405, 409; *Turpin v. Lemon*, 187 U. S. 51, 60, 61; *Hooker v. Burr*, 194 U. S. 415, 419.

2. By section 5 of the Federal Trade Commission Act the Commission is given jurisdiction when it has reason to believe that "any person, partnership, or corporation has been or is using any unfair methods 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." Section 4 of the act defines a corporation as "any company or association, incorporated or unincorporated" which either (a) is organized to carry on business for profit and has shares of capital or capital stock, or (b) is "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." The Harness Manufacturers' Association is a voluntary, unincorporated association and thus without capital stock. It is not itself engaged in business. Petitioner contends that it therefore is not within the act. But this contention overlooks the fact that the association is not the only one proceeded against; but that its officers and the members of its executive committee, as well as its membership generally, are included in the proceedings as parties and made subject to the Commission's order. The language of the act affords no support for the thought that individuals, partnerships, and corporations can escape restraint, under the act, from combining in the use of unfair methods of competition merely because they employ as a medium therefor an unincorporated, voluntary association, without capital and not itself engaged in commercial business. The order may be enforced by reaching the officers and members, personally and individually. A voluntary association, having many members, may be brought into court by service on its officers and such of its members as are known and can be conveniently reached, sufficient being served to represent all the diverse interests. *Evanson v. Spaulding*—C. C. A. 9—150 Fed. 517. Among the cases under the antitrust act which have enforced the liability of individual members for acts in violation of the statute, although done through a voluntary, unincorporated association, are *Loewe v. Lawlor*, 203 U. S. 274; *Dowd v. United Mine Workers of America*—C. C. A. 8—235 Fed. 1, 5, 6; and (apparently) *Eastern States Lumber Co. v. United States*, 234 U. S. 600. These cases we think present a satisfactory analogy to the instant case.

The contention that the Harness Manufacturers' Association is not engaged in commerce is answered by the consideration, first, that many of its members are so engaged, and, second, that interstate commerce is claimed to have been directly affected by the alleged unfair meth-

ods of competition. *Loewe v. Lawlor*, supra; *Eastern States Lumber Co. v. United States*, supra; *Nash v. United States*, 229 U. S. 373, 379. The objection that the public is not interested in the activities of the association is answered by the fact that if the Commission's findings are to be accepted trade conditions in the harness and saddlery trade have been substantially affected by the methods of competition in question. This subject will more fully appear by consideration of the nature and effect of the Commission's findings.

3. The harness and saddlery trade consists broadly of three divisions: (a) Manufacturers of saddlery hardware, harness goods, and horse furnishing goods; (b) wholesalers and jobbers who buy the last-mentioned classes of goods from the manufacturers and themselves manufacture harness in wholesale quantities, selling both classes of products to the retailer; (c) retail harness dealers who sell saddlery goods at retail and to a small extent manufacture harness.

The Commission's findings of fact, so far as now important, may be thus summarized: Prior to the organization of the Saddlery Association it was the general custom for accessory manufacturers to sell direct to retailers; and in large and important sections of the United States the wholesale and retail saddlery business has long been conducted as one operation. The Harness Manufacturers' Association is a voluntary, unincorporated association, its membership being composed largely of city and district associations in various cities throughout the States of the Union, the membership of these associations being composed of concerns engaged in manufacturing and selling harness and saddlery goods at retail, and who purchase their supplies of harness and saddlery goods largely from wholesalers and jobbers in interstate commerce, including members of the Saddlery Association. The membership of the Saddlery Association, which comprised the greater part of the wholesale saddlery trade of the United States, consisted of persons and concerns engaged in selling at wholesale harness and saddlery goods in interstate commerce throughout the various States and Territories of the United States to retail dealers, both members and non-members of the Harness Manufacturers' Association, and in direct competition with other persons or organizations similarly engaged, its declared policy being (at variance with the condition above set forth) to promote a system of trade by which the manufacturers should sell to jobbers only, the jobbers to the retailers only, and the retailers alone direct to consumers; that the Saddlery Association accordingly adopted and established a rule that concerns doing a combined and closely affiliated wholesale and retail business were not eligible to new admission into the Saddlery Association (although some of its old members were still, in various parts of the United States, doing a combined wholesale and retail business), as well as a policy

that such concerns were not entitled to recognition as legitimate jobbers, and that the adoption of such rule and policy were brought about in part by the influence and pressure, and in response to the overtures of the Harness Manufacturers' Association. The Commission further found that the officers, committees, and members of the Harness Manufacturers' Association and of the Saddlery Association have actively cooperated to establish the principle that a combined and closely affiliated wholesale and retail business was not a legitimate wholesale business;<sup>5</sup> that the secretary of the Saddlery Association has attempted to prevent accessory manufacturers from recognizing, as legitimate jobbers, wholesalers whose names were furnished by the Harness Manufacturers' Association to the Saddlery Association, as complained of by retailers, for competing with them; and that the Harness Manufacturers' Association has used its influence with the Saddlery Association to prevent the admission of specific concerns to membership in the latter association and the recognition of such concerns as legitimate jobbers.

The Commission further found that the Harness Manufacturers' Association has requested and secured the cooperation of members of the Saddlery Association in a refusal to sell mail-order houses, hardware stores, general stores, and other competitors of retail harness manufacturers not recognized by the Harness Manufacturers' Association as legitimate; that the latter has refused the privilege of associate membership to accessory manufacturers and jobbers who sell to mail-order houses, establishing, however, an associate membership restricted to manufacturers and jobbers who do not sell to consumers and to mail-order houses, and who are otherwise in harmony with the policy of the association, and issuing credentials thereof to the traveling salesmen of associate members and urging and encouraging the affiliated retailers to withdraw and withhold patronage from concerns whose salesmen were not so equipped; and have induced the members of the Saddlery Association to use their influence with the accessory manufacturers not to sell mail-order houses; and that by reason of refusals of accessory manufacturers, due to objections of the Saddlery Association, to recognize as jobbers certain competitors of members of that association, such competitors have been forced to buy from the Saddlery Association at prices higher than charged by manufacturers to recognized jobbers. The Commission further found that as a result of the opposition of the Harness Manufacturers' Association to sales by manufacturers and jobbers to the classes of competitors before mentioned, the latter had been prevented from purchasing as freely in interstate

<sup>5</sup> It is to be noted that one of the objects of the Harness Manufacturers' Association as stated in its constitution and by-laws, is "to protect the harness dealers from the unjust sale of goods by wholesale dealers direct to the consumers."

commerce as they would have been without such opposition. The findings detail many instances of specific means used to accomplish the various classes of alleged unfair methods of competition, and which we deem it unnecessary to set out.

Both the Saddlery and Harness Manufacturers' Association, its officers, committees, and members of its subsidiary and affiliated associations, were ordered to cease and desist from conspiring or combining between themselves to induce, coerce, and compel accessory manufacturers to refuse to recognize as legitimate jobbers, entitled to buy from manufacturers at jobbers' prices and terms, individuals and concerns doing or endeavoring to do a combined and closely affiliated wholesale and retail business; and from carrying on between themselves communications having the purpose, tendency, and effect of so inducing, coercing, and compelling accessory manufacturers in the respect above referred to.

The Harness Manufacturers Association, its officers, committees, and members of its subsidiary and affiliated associations were ordered to cease and desist from (a) conspiring or combining among themselves to induce, coerce, and compel manufacturers and jobbers to refuse to sell any of the competitors of retail harness manufacturers; (b) using any scheme whereby the active membership of the Harness Manufacturers Association concerted to favor with or confine their patronage to manufacturers and jobbers comprising the associate membership of that association or who had not complied with its active membership by selling to certain competitors thereof; (c) using or continuing any system of credentials or other indication of manufacturers and jobbers sales policies with regard to certain competitors and consumers, and from encouraging and urging retailers to confine their patronage to or to patronize manufacturers and jobbers whose sales policy is in harmony with the Harness Manufacturers Association's requirements as before set out; (d) inducing members of the Saddlery Association to use their influence with accessory manufacturers not to sell to mail order houses or other competitors of retail harness manufacturers.

In our opinion, the Commission's finding of fact, and the existence of the combinations, schemes, and practices directed to be discontinued, are amply sustained either by undisputed testimony or by the great preponderance of the evidence. This conclusion is not overcome by petitioner's criticisms addressed to specific features of the testimony. The findings of fact being so supported, the Commission's order is, in our opinion, fully justified by the authorities to which attention has already been called, including especially *Eastern States Lumber Co. v. United States*, supra, where a state of facts quite similar to that found here was held to amount to a violation of the Sherman Antitrust Act.

In view of what has appeared, the criticism of lack of public injury is without force. The suggestion that no damage has been shown, even if true in fact, is answered by the consideration that the remedy afforded by the statute is preventive, not compensatory.

The order of the Commission, so far as it relates to the Harness Manufacturers Association, its officers, committees, and the members of its subsidiary and affiliated associations, is affirmed.

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**CURTIS PUBLISHING CO. v. FEDERAL TRADE  
COMMISSION.\***

(Circuit Court of Appeals, Third Circuit. March 2,  
1921.)

No. 2511.

**1. CONTRACTS KEY No. 169—MUST BE CONSTRUED WITH REFERENCE  
TO ENVIRONMENT AND CIRCUMSTANCES.**

There can be no just construction of a contract without an understanding of the general situation and the causes which led to the making of the contract.

**2. MONOPOLIES KEY No. 17(2)—PROHIBITIONS OF CLAYTON ACT  
LIMITED TO SALES AND LEASES.**

The provision of Clayton Act, section 3 (Comp. St., sec. 8835c), making it unlawful to lease or make a sale or contract for sale of goods on condition that the lessee or purchaser shall not deal in the goods of a competitor of the lessor or seller, is limited to contracts of lease or sale by the clear meaning of its terms, and especially in view of its purpose to make invalid certain contracts of lease or sale of patented articles which the Supreme Court had shortly before held to be valid.

**3. MONOPOLIES KEY No. 17(2)—CONTRACT APPOINTING DISTRICT  
AGENTS FOR DISTRIBUTION OF MAGAZINES HELD NOT A  
"SALE" CONTRACT.**

A contract by a magazine publisher whereby it appointed another as its agent in a limited district for the purpose of selling and distributing its magazines to retail dealers and to boys who sold at retail, the district agents not being required to purchase the magazines but merely to receive and distribute them and to pay the stipulated price for those which they did not return as unsold, is not a contract for sale of goods, so that the insertion of a clause therein forbidding such district agents to sell at wholesale the magazines of any other publisher without the consent of the principal did not violate the Clayton Act.

[ED. NOTE.—For other definitions see Words and Phrases, First and Second Series, Sale.]

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\* Reviewing order of Commission in Federal Trade Commission v. Curtis Publishing Co., II F. T. 20. Petition of the Commission for writ of certiorari in this case was granted by the Supreme Court on June 6, 1921.

4. MONOPOLIES KEY No. 17(2)—REQUIREMENT OF INDEMNITY CASH DEPOSIT HELD NOT TO MAKE AGENCY CONTRACT A SALE.

The provision of a contract appointing district agents for the wholesale distribution of magazines that the agents shall deposit with the publisher a cash sum as security for payment for the magazines distributed to them, which sum the publisher must account for to the district agent, and on which it must pay him interest, does not make the agency contract a contract for the sale of the magazines within the provisions of the Clayton Act, since the deposit is merely a cash indemnity to secure the performance of the agent's agreement and not a payment for the magazines shipped to him.

5. TRADE-MARKS AND TRADE-NAMES KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—UNFAIR COMPETITION WITHIN TRADE COMMISSION ACT A JUDICIAL QUESTION.

Under the Trade Commission act (Comp. St., secs. 8836a-8836k), making unfair competition in interstate commerce unlawful, without defining unfair competition, the determination of whether the acts established amounted to unfair competition is a judicial question, as it long had been in remedial suits at law for damages and injunction suits to prevent unfair competition.

6. TRADE-MARKS AND TRADE-NAMES KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—COURT'S SUPERVISORY POWERS UNDER TRADE COMMISSION ACT INCLUDED DETERMINATION OF UNFAIR COMPETITION.

Under the Trade Commission act (Comp. St., secs. 8836a-8836k), giving to the Circuit Courts of Appeals supervisory powers over the decisions of the Trade Commission, but making the Commission's findings of facts conclusive, the courts, in exercising their supervisory powers, can determine whether the facts established show unfair competition; the decision of that question by the Commission not being final.

7. TRADE-MARKS AND TRADE-NAMES, KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—DECISION ON UNFAIR TRADE IN PRIVATE SUIT IS PERSUASIVE IN PROCEEDINGS UNDER TRADE COMMISSION ACT.

Where, pending proceedings before the Trade Commission to determine unfair competition, a private suit was instituted by competitors against the company whose methods were under investigation, to restrain those methods as unfair competition, the decision in that suit for the defendant company, though it was not conclusive in the proceedings before the Trade Commission or on review thereof, is to be considered by the supervisory court, with a view to avoiding conflicting holdings under substantially similar states of fact.

8. TRADE-MARKS AND TRADE-NAMES KEY No. 80½, NEW, VOL. 8A KEY-  
NO. SERIES—COURT CAN CONSIDER PROOF NOT INCLUDED IN  
TRADE COMMISSION'S FINDINGS.

Under the Trade Commission act (Comp. St., secs. 8836a-8836k), giving the Circuit Courts of Appeals power to review the decisions of the Trade Commission and to enter on the pleadings, testimony, and proceedings a decree, but providing that the Commission's findings of fact shall be conclusive, it is not only the province but the duty of the Circuit Court of Appeals to review the entire testimony, and to base its decree not only on the facts found by the Commission but also on those established by the testimony on which the Commission made no findings.

9. TRADE-MARKS AND TRADE-NAMES, KEY No. 80½, NEW, VOL. 8A KEY-  
NO. SERIES—RESTRICTIVE CLAUSE IN CONTRACT WITH MAGA-  
ZINE DISTRIBUTING AGENTS HELD NOT UNFAIR.

Where a magazine publisher had built up an extensive circulation by the employment of schoolboys as salesmen, and an essential element of the system was the use of district agents, appointed to receive the magazines from the publisher and distribute them to the boy salesmen, and to recruit and train the boys, the insertion in the contract appointing such district agents of a clause prohibiting them from wholesaling other magazines without the written consent of the publisher, which clause had never been enforced except against two competing publishers who had endeavored to reap the benefit of the first publisher's organization by inducing its district agents to distribute the competing magazines to the boys, was not unfair competition and can not be prohibited by the Federal Trade Commission under the Trade Commission act.

10. TRADE-MARKS AND TRADE-NAMES, KEY No. 80½, NEW, VOL. 8A  
KEY-NO. SERIES—EVIDENCE HELD NOT TO SHOW RESTRICTION  
OF COMPETITORS.

Evidence introduced before the Trade Commission that there was a magazine distributing agency, through whom the competitors of the publisher whose practices were under investigation could distribute their periodicals to all retail dealers throughout the country, shows that the clause in the contract appointing district agents which restricted such agents from wholesaling competing magazines without the consent of the appointing publisher did not prevent the distribution of the competing magazines.

11. TRADE-MARKS AND TRADE-NAMES, KEY No. 80½, NEW, VOL. 8A  
KEY-NO. SERIES—QUESTION OF MONOPOLY IMPORTANT IN DE-  
TERMINING UNFAIR COMPETITION.

Freedom of access by competitors to the consumer and entire absence of monopoly is an important element in the decision of cases of alleged unfair competition under the Federal Trade Commission act (Compt. St., secs. 8836a-8836k).



12. INJUNCTION KEY NO. 9—DOUBT AS TO RIGHT MAY AUTHORIZE REFUSAL.

Injunction is so drastic and prohibitive a remedy, and its issuance by a court of equity so carefully safeguarded, that to have substantial doubt of the wisdom of its issue often suffices to withhold it.

13. TRADE-MARKS AND TRADE NAMES KEY-NO. 80½, NEW, VOL. 8A  
KEY-NO. SERIES—SUPERVISION OF TRADE COMMISSION EXERCISED AS OTHER REVIEWING POWERS.

The power given the Circuit Court of Appeals to supervise the injunctive orders of the Trade Commission was intended to be exercised as those courts had been accustomed to exercise their reviewing power over injunctions by lower courts.

(The syllabus is taken from 270 Fed. 881.)

Petition by the Curtis Publishing Co. against the Federal Trade Commission to review an order of the Commission requiring petitioner to desist from certain practices found by the Commission to be unfair competition. Order of Commission set aside.

Prichard, Saul, Bayard & Evans, of Philadelphia, Pa., and Joseph W. Welsh, John G. Milburn, and John G. Milburn, Jr., all of New York City, for plaintiff.

Claude R. Porter and James M. Brinson, both of Washington, D. C., and Joseph A. Burdeau, of New York City, for defendant.

Before Buffington and Woolley, circuit judges, and Morris, district judge.

*BUFFINGTON, Circuit Judge:*

On July 5, 1917, the Federal Trade Commission issued a complaint against the Curtis Publishing Company, alleging that it had used unfair methods of competition in interstate commerce, in violation of section 5 of the act of Congress of September 26, 1914 (Comp. St., sec. 8836e), and had also violated the provisions of section 3 of the act of Congress of October 15, 1914, commonly known as the Clayton Act (Comp. St., sec. 8835c). This was followed by an amended complaint on the 8th day of April, 1918. The Curtis Company answered these complaints, and thereafter a large amount of testimony was taken, to which we will hereafter refer. On the 21st day of July, 1919, the Trade Commission made its findings of fact, and from these findings drew the conclusion:

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."

The same day the Commission issued a restraining order on the Curtis Company to desist from continuing such alleged unfair method of competition. Thereupon the Curtis Publishing Company brought this proceeding to obtain a review of such order.

The act of September 26, 1914, constituting the Trade Commission, provides as follows:

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful. \* \* \* 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. \* \* \* The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. \* \* \* 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. \* \* \* 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 herebefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the Commission as in the case of an application by the Commission for the enforcement of its order, and the findings of the Commission as to the facts, if supported by testimony, shall in like manner be conclusive.

In pursuance of the last provision of the statute quoted above, the Curtis Company by this proceeding seeks a review of the Commission's order, which order, together

with the Commission's findings of fact and the conclusion drawn therefrom, are printed at length in the margin.<sup>1</sup> An examination of these findings of fact shows that no findings whatever have been made in reference to the greater part of the vast volume of testimony in this case, and it therefore becomes the duty of this court, with

<sup>1</sup> 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 four hundred forty-seven (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 four hundred forty-seven (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 four hundred forty-seven (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 four hundred forty-seven (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 also engage 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."

a view to giving due effect to such testimony, to here recite what the proofs disclose as to the operations of the defendant company in those matters in which there has been no finding of fact by the Commission. And, indeed, in our opinion, such an examination and the ascertainment of the facts of such prior business dealings of the respondent company, is absolutely essential to a full understanding and a just determination of this case. Accordingly to the facts deducible from such testimony this court now addresses itself:

The Curtis Publishing Company is a corporation of the State of Pennsylvania. It was organized in 1883 with a capital of \$2,500,000, which has since been increased to \$25,000,000. Its business was the publication of periodicals, and from its incorporation until about 1897 that business was the publication of the Ladies Home Journal. In 1897 it acquired the Saturday Evening Post, and in 1911 the Country Gentleman. The Journal was a monthly publication; the other two weekly. From 1883 to 1909, with the exception of a brief period of an experiment of circulation in 1906 through wholesalers, the Curtis Company distributed for these 26 years the Home Journal by mail and through the American News Company, the business of which latter company was the circulation and sale of newspapers and magazines through the United States. The arrangement between the Curtis Company and the News Company was one of a distributive agent and not of sale, the undistributed copies being returned to the Curtis Company by the News Company. The Curtis Company distributed the Saturday Evening Post by the same method for some two years after its acquisition, but in the latter part of 1899 it began to sell and circulate that publication by the addition of schoolboy agents to its selling staff; and in that connection we here note that, while the attempted use by some of the competitors of the Curtis Company of these schoolboys as the agency of magazine sale and personal delivery to customers is the end which these competitors have in view, yet as the means of such control of the schoolboys the vital, strategic factor underlying this controversy is the use and control of the distributing agents later referred to, who furnished the magazines to the boys, and who are the operative and vital connecting and controlling link between the schoolboys and the Curtis Company.

These combined agencies of the American News Company and the schoolboys organized by the Curtis Company were both employed by the Curtis Company for some 10 years thereafter. During this time the new schoolboy organization had grown to such extensive size and had been so successful that in 1910 the Curtis Company wholly discontinued its prior status of distributive agency with the American News Company, and there-

after its relation with the News Company was that of sale only, instead of agency, the News Company not having the right to return unsold periodicals to the Curtis Company. At that time the Curtis Company began also contracting with and sending its publications to independent wholesalers throughout the country who were not related to or connected with the American News Company.

In addition to its contracts with the American News Company and the wholesale dealers in newspapers and magazines in the various cities and towns of the United States, the Curtis Company has also made contracts with persons and concerns who had not previously been engaged in the sale or distribution of periodicals for distribution through boys. The number of wholesale distributors of all kinds under contract with the Curtis Company was, by the testimony, shown to be 1,535.

The schoolboy selling organization of the Curtis Publishing Company was started by that company in 1899. At that time, as we have said, practically all magazines and periodicals were distributed through the American News Company. The Curtis Company, when it acquired the Saturday Evening Post, which was a weekly publication, conceived the idea of increasing its circulation through schoolboys. The success of the plan in selling the Post was such that it was extended to the Home Journal and the Country Gentleman. At first these boy salesmen got their copies not through local distributing agents but direct from the Curtis Company in Philadelphia. But as their number grew it was found difficult to deal directly with them from the home office, and the Curtis Company therefore appointed district distributing agents in various localities whose duty it was to distribute the periodicals to the boys and who were likewise charged with the duty of recruiting and supervising the boys themselves. These distributing agents, largely drawn from the ranks of the schoolboy salesmen, are, as we have said, the permanent keystones and pivotal and controlling factor in the whole plan, for the schoolboy salesmen being, in the nature of things, a temporary and changing body, they must be constantly recruited, and this recruiting the distributing agents do. The distributing organization as a whole has been developed and is being carried on at large expense. At the present time it consists of approximately of 1,500 district agents, having supervision of some 35,000 boy salesmen, and the organization is kept up at an expense of about \$1,500,000 a year, and it is the principal agency employed by the Curtis Company in distributing its periodicals, and without control and undivided loyalty of which its business would materially suffer.

The proofs show that the circulation of the Post increased very rapidly with the use of these schoolboy

salesmen, but that this was only brought about by the overcoming of many difficulties and the expenditure of large sums of money, and the education, so to speak, of the boys and their parents, and eventually by the use of local distributing agents, who, on the ground, did the work the Curtis Company originally did from the home office. The development of the system is set forth in the testimony of M. E. Douglas, as follows:

Q. Did you encounter any difficulties in circulating through boys the way you did?—A. Yes.

Q. What were some of them?—A. We found a prejudice in the minds of the parents and others against the idea of having boys sell magazines in this way. They looked upon the work of selling magazines as being the same as the work done by newspaper boys selling newspapers on the streets. There was a prejudice against it. They considered the newsboy's work as blind-alley work. We had to make our methods different and our plans different in order to win the cooperation of the parents and teachers and others, and that required long and arduous work and the expenditure of a good deal of money. We had to inject into our plan an educational context in order to win the convinced participation of parents in our plan with respect to boys.

Q. What other difficulties did you have?—A. We found the boys fickle, and we had to devise various ways and means of retaining their interest and their efforts. Our effort was almost entirely to get steady customers, whom the boys might serve regularly from week to week, and we, of course, had to teach the boys how to do this and tell them how.

Q. Did you secure the cooperation of the parents and the teachers of the boys you had selling the Saturday Evening Post?—A. We did.

Q. Was the Post in the beginning known throughout the country?—A. It was not known west of the Alleghenies.

Q. What was the character of the boys who were selling the Saturday Evening Post at the time you mentioned?—A. Almost all home boys and schoolboys, who sold nothing but our magazines.

Q. Explain the plan you had of selling copies of the Saturday Evening Post through boys.—A. As I stated, the boys sent in their remittances and orders to Philadelphia, and we mailed the copies back to the boys. Then, in order to carry out or in order to accomplish our plans, we had to make it possible for the boys to learn how to sell. We began printing leaflets and pamphlets and house organs, in which we placed suggestions for the guidance of the boys, telling them what to say about the publications—telling them what to say about the articles or features of the publications. We, in short, had almost to put into the mouths of boys what they should say about the articles in the magazines, and we had to help them to identify the class of readers to whom to go. We had to associate the particular article with the prospective purchaser in the mind of the boy, in order that he might judge how to intelligently approach the reader who would be most apt to buy the particular article or issue. That required a good deal of work, in addition to the other necessity of getting the convinced participation of the parents of the boys in this proposed plan.

Q. How did you obtain the participation of the parents and teachers?—A. We built up a circulation of 25,000 to 40,000, and then we found it difficult to make further increases. The increases that had been made up to that point did not follow, and we began to analyze the reasons for that, and we found that it was—

Q. How did you obtain the participation of the parents and teachers that you spoke about?—A. By emphasizing the business

training value of this work and pointing out what was involved in it.

Q. How was that done?—A. By concrete illustrations as to what was involved in that.

Q. Was that done by traveling men or correspondence?—A. We began with a few traveling men in about 1901, and we gradually increased the force, so that we had traveling men as well as correspondence helping to this end.

Q. What educational feature was incorporated in your method?—A. Eventually we worked out the plan of the League of Curtis Salesmen.

Q. The what?—A. The League of Curtis Salesmen.

Q. What was that?—A. A league composed of the organization of our better boys—the boy reaching the highest rank in the league is assured of a good salaried position obtained by us for him. There are several ranks in the league. This was the culmination of our effort at imparting the educational content to the parents.

Q. That was the culmination of your effort that began in 1899 or 1900, when you first started to break down this prejudice of the parents and teachers?—A. Yes, sir.

Q. Which you testified about?—A. Yes, sir.

Q. Was there anything with respect to the vocational training of boys, other than you have testified, with respect to the instruction that you gave them?—A. Oh, yes; we have used moving-picture films, and we have had conventions—

Q. I mean at that time.—A. In the early time?

Q. Yes.—A. We emphasized points like this: Boys in connection with this work have opportunities to learn something about the keeping of accounts, because they have accounts to keep with their customers and with the district agent, and we emphasized the desirability of learning salesmanship by reason of the fact that the vocation of salesmanship is one of those vocations having a large number of people employed in it—larger, in fact, than all but three or four other vocations, perhaps. For instance, bookkeeping—that is taught in almost every public school, yet there are several salesmen for each bookkeeper, and you hardly find salesmanship taught in any high school—at least not one in a thousand.

Q. At that time, in 1899 and 1900, the boys were in direct contact—that is, the boys who were selling the Saturday Evening Post—were in direct contact with the main office of the Curtis Publishing Company in Philadelphia?—A. Yes, sir.

Q. Did you have any local agents at that time—in the beginning?—A. Not in the beginning.

Q. What gave rise to the appointment of local agents? Just briefly explain that, Mr. Douglas.—A. We found need of local supervision.

Q. Local supervision of the boys?—A. Local supervision of the boys—yes, sir—in order to adapt it locally, to meet local conditions, the plans I have described. That is when we began appointing district agents.

Q. When did you appoint the first district agent of the Curtis Publishing Company?—A. The first district agent was appointed in about 1901.

Q. Who was it?—A. Beverly Roy Dudley, of Richmond, Va.

Q. Was he a boy salesman?—A. He had been a boy salesman.

Q. He had been a boy salesman?—A. Yes, sir.

Q. He was the first district agent appointed?—A. Yes, sir; the first district agent appointed.

Q. Who was the next agent appointed?—A. I think the next was Wallace Greenbaum, of Denver, Colo.

Q. Had he been a boy—a Curtis boy?—A. Yes, sir; he had been a Curtis boy.

Q. Did you keep on appointing district agents after that, from time to time?—A. We appointed a few and watched them to see what developed, and, as excellent progress followed, then we began appointing other district agents just as fast as we could everywhere.

Q. Have you any idea about how many you had after the first six months—just approximately?—A. We probably worked for about three months with a dozen to see what the developments were. Then within six months after that I should say we had a hundred or two.

Q. What was the main reason for your appointing these district agents and what were they supposed to do?—A. *We wanted a representative locally—an agent locally—who would coach these boys and train them as salesmen. We wanted to shift, with respect to this effect, the center of gravity from Philadelphia to these cities and have an agent there who would coach these boys and do the same things we were doing at Philadelphia.*

Q. Did that involve meeting with the parents and teachers?—A. Yes, sir; that involved meetings with the parents and teachers.

Q. What did the agent have to do at that time with respect to making any reports?—A. Very soon, in due course, after we had appointed a considerable number of them, so it became a practical thing, then we began to ask them to make reports of sales by boys individually. Of course, when we appointed one of those agents we turned over to the agent all the boys in the town who had been previously buying from us and asked them to buy from the district agent, thereby giving the district agent the local organization to start with, giving them the boys we had been previously supplying; and as soon as it became a practical thing we had these agents report to us the sales by the boys individually.

Q. So after 1901, which was the beginning of the employment of district agents, you testified, I think, that you put in more from time to time at various places?—A. Just as fast as we could.

Q. Now, at that time, how were the district agents located and found—selected?—A. They were placed largely by correspondence, for the reason that in the early days we did not have an adequate force of men. We had applications from a number of the boys asking for appointment. In our house organs we made mention of the arrangements that had been made with district agents.

Mr. DALY. What question is he answering?

Mr. WELCH. He is answering how the district agents were selected and found.

The WITNESS. In our house organs we made mention of the arrangements that had been made with Beverly Roy Dudley, and with Wallace Greenbaum, and with others, and this resulted in applications coming to us from boys in other cities, who wanted similar arrangements made.

Q. Did you have any traveling men appointed then?—A. We had a few; yes. Then, as we found this plan proving successful, we advertised. We advertised for persons to act as agents for us.

Q. And this was covering the period from 1901 up to about when? That is, it was a continuing period, after 1901?—A. Continuing period; yes.

Q. Now, what was the character of the men, other than boys, that were appointed district agents?—A. Chiefly retail dealers.

Q. Retail dealers in what?—A. News dealers, stationers, book stores, druggists, tobacconists, candy stores occasionally—every kind of a retail store.

Q. Did you endeavor at first to obtain as district agents one of the boys who had been selling the Post?—A. The preference was always given, under our original instructions, to one of the boys who had previously been selling, if there were one qualified for leadership of the others.

Q. And, following that, your traveling men or you would appoint a retail dealer?—A. *Some one qualified for leadership, chiefly retailers.*



Q. And you kept on appointing—did you after that keep on appointing boys as district agents, wherever available?—A. Yes; we still do so.

Q. And still do it?—A. Yes.

Q. That is, boys who previously sold the Post and the Curtis publications?—A. Yes; *there are thousands of boys, right now, looking forward to the time when they may get to be district agents.*

Q. What did you do with respect to extending district agents or not?—A. In about 1909 we began to use traveling men on a large scale, to appoint district agents in towns where we then had not appointed them.

From this it will be seen that the development of these district agents was a natural outgrowth of the commercial and fair development of the business; that the first district agent was appointed in 1901; that the first appointees were old boy salesmen; that on the district agents was placed the responsibility of personally dealing with the boys locally, instead of from the home office at Philadelphia; that beginning with a few such local distributing agents the success of the movement developed rapidly; and, indeed, the very business of these distributing agents, which these two competing companies seek to share, namely, the boy force of these agents, was turned over to the agents originally by the Curtis Company itself.

As the plan of working through distributing district agents proved successful the Curtis Company began advertising for persons to act as distributing agents—"news dealers, stationers, book stores, druggists, tobacconists, candy stores, originally—every kind of a retail store." However, the preference was always given to one of the boys who had developed in the boy organization, and the extent of this preference for the boys was shown by the fact that, out of 1,700 or 1,800 distributing agents, the Curtis Company had had, in 1910, about 85 per cent of boys and retail dealers. Indeed, the fact that from the boys there were being developed *trained* distributing agents, and that these distributing agents were *recruiting* new boys, shows how widespread and *correlated* the two factors were.

Q. About how many district agents did the Curtis Publishing Company have in 1910, approximately, if you know now?—A. About 1,700 or 1,800.

Q. Did they have that many as early as 1910?—A. I think so.

Q. You testified that most of these district agents, in 1910, were boys and retail dealers. Can you give any estimate of what percentage were boys and retail dealers?—A. About 85 per cent.

This general plan seems to have been original with the Curtis Company, the proof being that "at that time there was no other publisher of magazines which circulated its magazines through local district agents supplied directly by the publisher and by the boys." It will thus be seen that in its novelty and success it was a new factor within its sphere of developing a new and not of operating an old field of commerce.

Up to 1910 the distributing district agents sold their publications direct to the boys only, and retail news dealers were supplied by the American News Company. Shortly before that time, owing to business friction between the Curtis Company and the American News Company, the district distributing agents were left free to deliver copies of the Evening Post to retailers, and this arrangement was later extended to the Ladies' Home Journal. Up to the year 1910 the Curtis Company's district agents wholesaled no other magazines than the Curtis Company's Post and Ladies' Home Journal, a business practice to which no one is shown to have objected as unfair business competition. The expense of maintaining these sales through the distributing district agents and the boys at large amounted in 1908 to over \$250,000 and in 1909 to over \$376,000.

In 1912 the Curtis Company acquired, as we have said, the Country Gentleman and distributed it through its distributing district agents and boys and through the American News Company in the same way, and from that time on has continued to expend large sums for prizes, etc., among its distributing agents and the boys, approximately the following sums: 1913, \$89,000; 1914, \$88,000; 1915, \$126,000; 1916, \$184,000; 1917, \$136,000. The personal character of the work of the local distributing agents and the personal relation of these boys to the Curtis Company and its local distributing agents was shown by the proofs. As a part of the boys' compensation, the company paid the dues in the Y. M. C. A. of a large number of boys; these membership fees now amounting to \$2,500 a year.

A league of what is called "Curtis salesmen" was formed among the boys, membership in which was dependent on their *standing* in their local school work and on their *efficiency* as salesmen, both of which features it was the *work* of the local distributing agent to oversee. The boys reaching the highest rank in this league were assured good salaried positions on leaving school, and their high character and the success in training them is proved on the record by the fact that at the time the proofs were taken there were 2,000 applications on file from some of the best business concerns of the country asking for these boys. The personal character of this work of the local distributing agents and the cooperation of the company's traveling agents in the organization of this league of the boys, and the time, patience, and expenses expended in its formation are fully set forth on the record, and show beyond all question that this widespread, novel, and effective selling organization of distributing agents and boy salesmen is a part of the complainant's business, fairly and laboriously built up by it, and leaves no doubt that its morale, efficiency, and good will was a business asset and in the distribution of maga-

zines of great value; and its continuance and its success was, in the main, bottomed on the undivided loyalty of the local distributing agents and on their continuing to remain distributing agents of the Curtis Company alone.

The proofs show that the compensation of these boys and the distributing district agents was fair; taking, as an example, of the five cents paid by a customer to the boy for a copy of the Saturday Evening Post two cents went to the boy, one-half of one cent to the distributing agent, and two and a half cents went to the Curtis Company for publishing and delivering the magazine to the district agent. Indeed, the personal character of the relationship and the distributing agents, as the prime element in the whole plan, is stated by Charles W. Eliot, late president of Harvard University, who says:

The method of the Curtis Publishing Company in enlisting a large number of boys who are still at school in selling its publications and teaching them how to sell the journals to the advantage of the company and to their own profit gives a useful example of cooperation between schools and industrial companies in the training of boys. It is a first-rate example of vocational training given by a commercial company during the period of school life. The Curtis Publishing Company's method has proved successful in several important respects: First, it has provided the company with a large body of *effective young distributors* of its products; secondly, it has kept thousands of boys in school longer than they would otherwise have stayed there; thirdly, it has taught them thrift and accurate accounting, an invaluable lesson; fourthly, it has given many thousands of boys a knowledge of the art of selling journals, which easily becomes available in many other businesses; fifthly, it places many boys in good situations on well-grounded recommendations, when, being fit for larger service, they leave the employ of the Curtis Publishing Company. The Curtis method has thus been of great service, not only to more than 50,000 boys but also to employers in a large variety of industries. It should be clearly understood that boys who avail themselves energetically of the offers of the Curtis Publishing Company can still have half of their afternoons for play, and can earn by diligence out of school hours not only their pocket money but a considerable savings-bank deposit in the course of four or five years. The winning of this deposit is likely to affect beneficially the whole future career.

The proofs show that 95 per cent of these boys sell only the publications of the Curtis Company, and that, in view of their school duties and in deference to the wishes of their parents, the sales for the Curtis Company is the limit of their selling power, and if they sell other magazines they must cut down the Curtis sales. The proofs show that the Curtis Company expended in the maintenance of district agents and boys in the four years, 1914 to 1917, both inclusive, over \$5,500,000, and they abundantly satisfy us that this method of distribution is an entity made up of the joint activity and personal cooperation of district distributing agents and boy distributors and their relationship to the Curtis Company, each one of the three being dependent upon the other two for the proper cooperating and interrelated distribution of the respondent's publications and promptly

furnishing the same to the reading public, and that this plan originated with and was built up by the Curtis Company through years of patient effort and at great expense, and that it forms the basic, practical method of distributing and marketing the Curtis Company's publications and is a business asset of great value, and that the vital and basic element in this business is the undivided loyalty and personal interest and influence of the distributing agents.

After the success of this plan had been demonstrated by the work and money of the Curtis Company, it is to be noted as an evidence of business morality among the magazine publishers that but 2 of the 400 magazine publishers made any effort to take away from the Curtis Company the undivided services of its distributing agents. And it will be further noted this effort was involved in and became the subject of judicial consideration in a suit hereinafter referred to. *Pictorial Review Co. v. Curtis Publishing Co.* (D. C.), 255 Fed., 209. There the court, in its opinion, held as to the relative conduct of those 2 competitors:

The defendant, in insisting upon maintaining the integrity of its system, is not in my opinion guilty of unfair trade. On the contrary, the complainant, in attempting to avail itself of this system, is engaging in unfair trade. That it can not build up a system of its own, if it desires to do so and will go to the trouble and expense, I do not believe. It is attempting here to secure a preliminary injunction to prevent the defendant from contracting with the latter's district agents not to market the *Pictorial Review* through boys and dealers. To grant such an injunction would break up what I think is a perfectly legitimate system for the promotion of sales of the defendant's magazines, and would enable the complainant, without expense, to employ the organization built up and fostered by the defendant.

Turning, then, to the proofs in regard to the acts of the Curtis Company and these two competitors which form the basis of this proceeding, we note that in 1910 the Success Company, which published the *Post Magazine*, now the *National Post Magazine*, endeavored to make use of the Curtis organization. But from 1912 to 1917 the services of the boys in the organization described have been utilized solely by the Curtis Company. During that time a number of other magazines and periodicals had been wholesaled to retail dealers by some 366 of respondent's district distributing agents, out of a total of 1,375. This has been done with the understanding that no use should be made of the respondent's boy organization for the sale of the periodicals of such publishers. The proofs further show that about 1917 the two magazine companies, which published the four magazines referred to, undertook to avail themselves of this boy organization of the Curtis Company. One of these companies was the *Pictorial Review Company*, which published the *Pictorial Review*; the other the

Crowell Publishing Company, which publishes four magazines, namely, Women's Home Companion, American Magazine, Farm and Fireside, and Every Week. These companies have built up a great business and great circulation of their magazines through the American News Company and by other means open to them, as to which reference is made in the testimony of Messrs. Beck and MacKinnon.

As we have seen, the Pictorial Company depended entirely, in the matter of single copy sales, on the American News Company and its facilities. Seeing this, they sought to secure the local distributing agents who are under contract with the Curtis Publishing Company, "in order to secure a wider and more efficient and better service and more circulation." The proofs show the commercial significance of this effort was that—

If we could reach all of the wholesalers in the country—that is to say, if we could do business with all of them—I think the doubling of our *single copy* sales (that is, a sale by boys) would not be unreasonable to expect on Every Week.

In addition to the effort to reach the distributing agents of the Curtis Company, the proofs show that efforts were made to reach the boys whom the distributing agents had. At first no objections were made by the Curtis Company, in a number of cases, to its district distributing agents handling these periodicals:

With Every Week, as with Pictorial, we granted permission in a number of early cases, until it developed that the methods in use were contemplated to be generally objectionable to us.

These later-developed methods, after February, 1917, are shown by the proofs that—

In the case of Every Week we found that they were beginning to sell through boys.

The letters of the Pictorial Company, which began about January 20, 1917, and were sent to the distributing agents of the Curtis Company, among other things, stated:

We are ready to supply you directly with such copies of Pictorial Review as you can sell through boys, \* \* \*. Your boys should be able to do a corking business.

In the specific instructions sent out to give these Curtis distributing agents, they were directed by the Pictorial Review to "get your boys busy getting orders for regular monthly delivery." That the purpose was to undermine the sale of the Home Journal by the Curtis Company's boys is clearly indicated in a circular dated November 28, 1917, in which they said:

May be you have some newspaper or route boys whom you could get started with a monthly delivery by offering them this bonus in addition to their regular four cents.

Thus, the testimony of Smith, of Washington City, is that an agent of the Pictorial Company came to his office and—

wanted me to take some copies from the Washington News Company and get my boys who were selling the Saturday Evening Post and the Ladies' Home Journal to try them out.

The proofs further show that it was to be done in an underhand manner; the witness stating:

Before I had a chance to refuse it, it was offered to me with the suggestion that I could get it in my sister-in-law's, or my wife's or in the name of a couple of men who worked around the office.

The proofs further show that Smith was a sales boy who had grown up with the Curtis Company sales agency, having started with that company when he was eight years old. The proofs show that Thomas had about 350 boys selling for him and that he had received about 200 from the Curtis people when the work was turned over to him; that he had meetings with the boys at the Y. M. C. A. and the boys' homes. Thomas testified that Korb asked him to handle the Pictorial. "He said he would accept; if the boys wanted any copies, to let them have them." Thomas had been brought from Norfolk and Newport News, where he had been working for the Curtis Company, to Baltimore, and had taken charge of their business there. It is also to be noted that while Korb was endeavoring to get the use of these 350 boys through Thomas the latter was not the only wholesaler in Baltimore; that Cann, Wilson, and Grape were wholesalers who handled the publications of other magazine publishers, and who, it is fair to conclude, were all competitors of the Curtis Company, could get their service.

The Curtis Company's district agent, Kimbrough, at Richmond, was also approached. He had been connected with the Curtis Company for seven years; had grown up as one of their boy salesmen; had worked into the position of district agent and handled no other magazines. There were other wholesalers in Richmond, the proofs show, namely, the Richmond News Company and Levy & Co.; but Kimbrough was asked to handle the Pictorial.

They said they wanted to get away from the American News Company, and would turn their store business over to me if I would permit the sales with the boys, and I said I would refer the matter to the Curtis Publishing Company.

Q. Those are the only boys you have?—A. Yes, sir.

Q. You distribute magazines through these boys?—A. Yes, sir; Curtis publications, and they handle only Curtis publications as far as I know.

The suggestion was likewise made to him that he could take an agency for the Pictorial in somebody else's name.

The proofs show these boys form a dependable body; that they had their own permanent customers; and they

also show the personal work of Kimbrough. In these respects the testimony of Kimbrough was:

Q. Did you have any talk with Mr. Korb or did Mr. Korb say anything to you about other Curtis agents handling Pictorial Review?—A. Yes; he said that there was no objection on the part of the company, because Smith, at Washington, and Schafer, at Pittsburgh, were handling the Pictorial Review.

Q. Was anything said about your brother?—A. He did suggest that I could do that.

Q. What do you mean by "could do that"?—A. That I could have taken the agency in somebody else's name.

Q. How many boys have you?—A. Well, it runs on an average of around 100.

Q. Are they a pretty permanent body?—A. They keep at a pretty permanent figure of about 100. I have one boy who was selling before I was district agent, and he is still selling, and others come and go, and last two or three years or a few weeks, and that is about the way it works out.

Q. They have permanent customers or routes?—A. Yes, sir.

Q. What kind of boys are they? Where do you get them?—

A. Most of them from school lists and advertisements inserted in the papers asking for nice, clean boys.

Q. Most of them are schoolboys?—A. Yes, sir.

Q. Have you done any work instructing them, or holding meetings with them?—A. Yes, sir; I have held meetings with them, and often they come and ask me where they can get customers, and I tell them the best I know how.

Q. And do you do some Y. M. C. A. work?—A. We have meetings with the Y. M. C. A., and the Y. M. C. A. has cooperated with us and loaned us their swimming pool.

It appears from the testimony that at the time Kimbrough was thus asked to take these agencies and have the boys do the selling, Levy was the main wholesaler in Richmond at that time, the seeming object not being to get a dealer to handle their magazines but to get a Curtis distributing agent who could use the Curtis boys.

The testimony in regard to the situation at Rochester, N. Y., is also indicative of the real purpose the Pictorial Company had in view. In that city the wholesalers were the Rochester News Company, which was a branch of the American News Company, and the Manson News Agency. They were old, well-established concerns. Lazarus, the district distributing agent of the Curtis Company, had been such for 14 years and sold no magazines except the Curtis publications. He had about 220 boys, and they had their own customers. The value of the personal character and the personal work of a distributing agent, as used in the Curtis plan, is shown in the testimony of Lazarus:

Q. How long have you had your Curtis contract?—A. About 13 or 14 years.

Q. You sell your papers, I presume, to dealers and to boys?—A. To dealers and to boys; yes, sir.

Q. How many boys have you?—A. I have about 220 boys that sell the Posts and the Journals, and about 30 or 35 corner boys.

Q. Newsboys?—A. Newsboys; sell Curtis magazines and papers, etc.

Q. Of the 220, do any of them do any selling other than Curtis publications?—A. No, sir.

Q. They have their own customers?—A. Own customers; yes.

Q. What kind of boys are these?—A. They are all good class of boys. Their fathers are lawyers, doctors, and business people.

Q. You went out and got these boys?—A. Yes, sir; I went out and got those boys.

Q. How did you get them?—A. I have different ways of getting boys—boys that sell for me. They bring them to me, and then again I am in a business place where there are 340 offices in it, all lawyers, doctors, and all class of peoples, and their sons sell for me. They tell their boys to sell. Once in a while we would be offered different ways of getting them, through newspapers. Curtis has a way of putting it in the papers, you know, getting boys, and it is easy to get boys, anyway.

Q. You never have any trouble?—A. Never have trouble getting boys at all; no, sir.

Q. Do you work with the Curtis Company, with their own men there, in getting them and keeping them efficient?—A. Yes, sir; I do.

Q. And you report on these boys every week, the results of their efforts, do you not?—A. Every week; yes, sir.

Q. Are any of these boys members of the Curtis League?—A. Yes, sir; well, we have about four master salesmen and about three league salesmen.

Q. Any plain league members?—A. Yes, sir.

Q. Have you got any expert salesmen of the middle class?—A. We have got some, I think; I am not sure. I think I have.

Q. If they sell enough papers they get advanced in rank in the league?—A. Yes, sir; get advanced in rank in the league.

Q. Do you have any contact with their school-teachers?—A. Yes, sir; I do.

Q. What do you do?—A. I know them all personally. They are glad to send boys to me.

Q. You work with the school-teachers in getting boys?—A. Yes, sir; work with the school-teachers in getting boys. Then, we also have about 10 boys that I guess the Curtis Publishing Company paid their way through the Y. M. C. A.

Q. And you work with the Y. M. C. A. there?—A. Yes, sir.

Q. Do you know whether the Curtis Company has done that?—A. Yes, sir.

The same proposition was made to him that was made to the others, stating that they wanted him to handle the publications through the boys. Lazarus testified that he sells 7,000 Posts and 4,500 Ladies' Home Journals; that "he don't handle other business, because Curtis magazines keep him busy"; and that he gives it all his time.

In Louisville, Ky., the Heverin News Company was the large wholesaler. It was not a branch of the American News Company. It handled a large number of magazines and newspapers and had been long in the business. Goodman had been the district distributing agent of the Curtis Company for only three years, and his business was exclusively for them. He distributed to 117 boys and to some 215 retail dealers. He testified that he had had the fullest cooperation of the Curtis Company in obtaining boys for his work, and that the Curtis Company was in personal correspondence with every one of them; that these boys were appointed by name by the Curtis Company; that they received prizes or bonuses from that company, and printed matter. He testified that for every new boy he started in the work he received from the Curtis Company \$1. Goodman testified that a



representative of the Crowell Publishing Company had endeavored to get him to sell their Every Week in Louisville.

One of the road men, he was trying to place Every Week in Louisville. He approached me, and I explained the situation, that I did not care to handle it, and he finally asked me if I had any relative or any brother working for anybody in the newspaper business, and I told him I had a brother working in the Louisville post office, and he suggested I place the agency in his name.

Q. In your brother's name?—A. And have our Curtis boys sell it, and by doing so, the agency not being in my name, they would not find it out.

Q. Now, the Crowell man, of course, wanted to do the same thing for the boys, too, did he not?—A. He wanted the Curtis boys to sell Every Week.

Q. And thus reach the same customers that the wholesale dealer could not deliver to?—A. No; Every Week wanted to draw the benefit of the Curtis work.

Q. I know he wanted to get the benefit of the Curtis organization, but he was trying to reach these customers, was he not?—A. He was trying to have the boys sell Every Week to some of their Post customers.

The substantial character of Goodman's magazine business is shown by his sales of 4,700 Posts a week, 2,300 Journals, and 750 Country Gentlemen.

Proofs in reference to Topeka, Kans., clearly show that the boy organization was what the Crowell Company was after, and not the general wholesaler. In Topeka, one Patterson was a wholesaler and is now handling 15 magazines; Miss Goodrich handled the Curtis publications alone. The representative of the Crowell Company came to Topeka four different times, endeavoring to induce her to take on his magazines and obtain the use of the Curtis boys. Miss Goodrich distributed the Curtis publications to 33 dealers and had 170 boys. She was the clerk of a church, and took up the work with the boys as a vocational, altruistic work. She had parents' meetings once a month, meetings of boys of the Y. M. C. A., had them organized in teams, and got in touch with their work in the schools. It was this organization that the Crowell agent wanted to avail himself of. Her testimony shows the personal nature of the work:

Q. You are intimate with a number of the parents of these boys?—A. Yes; we have had parents' meetings once a month. The *parents* are interested in what the plan is doing for the boys; in fact, the whole game with me is a vocational plan, anyhow, and what it is doing for the boy, and I am not only getting these boys, but the parents and teachers at the schools. I had one high school teacher who came to me and asked for viewpoints about salesmanship. Salesmanship is taught in the high school at home, and the lesson that day was "Selling Saturday Evening Posts." I had another teacher who came and asked us what we could do for a boy who was late at school. I said that should not be, and I just told her to announce that a boy who reported late at school would not receive his copies until after school. She has spoken to me several times since, and she said that boy has never been late since.

Q. You are in this because of your great personal interest in this vocational work?—A. I surely am. The agent said I have such a good organization it was not necessary to go farther, and that he had a good proposition and would like to leave it with me. I said I could not take on the other publications without the consent of the Curtis Publishing Company, and, besides, I did not want to use the boy organization, because it was strictly a Curtis organization.

Miss Goodrich sold substantially 2,000 Posts and 2,000 Journals of each issue. The existence of another competent wholesaler in Topeka, and the continued persistence of the Crowell Company in endeavoring to get the boy organization which Miss Goodrich, the Curtis distributing agent, had built up as a distinctly Curtis organization, shows that the boy organization was the crux and aim of the Crowell Company's efforts, and the key to getting it was getting the distributing agent.

The testimony of Mrs. Sturdevant shows very clearly the personal, altruistic, vocational character of the work of the boys in the Curtis organization; the personal work of the district distributing agent in building up the organization and of the Curtis Company in aiding in its upbuilding; and the desire of the competing company to avail itself of this boy agency created by the Curtis Company. Mrs. Sturdevant was a district distributing agent in St. Louis, a city of such magnitude that obviously these competing companies could each get a competent wholesaler to distribute its magazines. In the face of this fact, an effort was made to induce Mrs. Sturdevant to give them the services of the boys of this Curtis organization. Her testimony shows that she gained her training under Curtis branch managers, and, as she said, she "learned the Curtis ideals and Curtis methods." She had 187 boys, all of whom were school boys. "I make it my business to know the parents of the boys in almost all cases, and know them personally, through the boy, either over the phone or by visiting at their home." She kept in touch with the boards of schools and got information from them in regard to the boys' school standing, "because the company required that the boy must make good marks in school." She had her boys subdivided into ten club organizations, and at the meetings—

We have instruction on the selling features of the particular publication for that special week. We talk about the cover (of the Curtis publication), analyze it, and discover whether the cover is a good selling feature—whether the cover will sell the copy or whether we must refer to something inside.

The work of the district distributing agent with the boys is supplemented by the traveling representative of the Curtis Company. The proofs show:

Men came there at times for special efforts to get boys. Mr. McLarty, and last year Mr. Neer and Mr. Wehner, different Curtis representatives, came there. Then the company makes very special efforts themselves by making prize offers to the boys.

As showing the personal character of the work of this organization, the same witness testified:

Q. Now, during these six years' experience, during the time you were district agent, you had experience in watching these boys and instructing them?—A. Yes.

Q. Would you say that it had been beneficial to the boys as a whole?—A. Oh, I know it.

Q. Well, is there any particular respect that you could speak about in which it has benefited the boys?—A. There is a boy [indicating picture] that I had from the time that he was a small boy, and this boy now is a bank examiner. \* \* \* In the eighth grade, when he got about 14, his mother began to have trouble with him. She is a widowed mother. She appealed to me. So I took it up with Elmer, and got him to be a member of the League of Curtis Salesmen, promising him that if he would make certain sales he could do it. I kept him from quitting school, and I kept him from losing his grades because the company required *that the boy must make good marks in school*. So I appealed to Elmer in that way, and through the principal of his school, Mr. R. L. Barton, and his mother and grandmother and Mr. Barton, we all worked together and showed him what it would mean to him to do this. And then when he got out of school he got a position in the Mechanics' American National Bank. I went to see Mr. Allen about three or four months afterward, and he said, "If you have any more boys like that, send them to me and I will take them." \* \* \* Very much benefited, I have a small boy who is the son of a widowed mother, and he only sold five copies when he began, and was exceedingly stupid. I took it up with his mother. He could not keep account of his money at all. So she called me up and asked me if I thought Robert had better quit. I said, "By all means, no; let me have him three months more." He could not make change; in fact, he very seldom got home with as much money as he started out with for a while, and his mother considered it a bad investment. But his mother and I together have been very busy, and we cooperated with him. At the present time, at the last call his mother made on me in regard to it, she said, "Robert is able now to go out and deliver all his copies"—he is taking ten copies now—"and to come in with the entire amount of cash, and he can make change." He is only eight years old.

Q. How old is Robert?—A. Eight years old. And his mother has persisted in it, even at the loss of money, for the sake of principle and the boy, and she helps him keep his accounts every week. I had another boy, Douglas Crockwell. His father is in the wholesale leather business. And Douglas's father had had me teach his boy. He is not selling now, on account of the condition of his health. And his father told me that he makes Douglas account for every cent of his profits. Every week they go over the book that the gentleman showed here.

Q. Yes?—A. And they figure his profit, and a certain amount is laid away for spending money and a certain amount is put aside in a permanent fund, and the father and Douglas attempt to account for every cent that is earned in prize money and bonuses and everything else.

We quote these things at length, not as showing the altruistic character of the organization, its worth to the boys, or as being a factor in the decision of this case, but simply to show that, whatever the boy sales agency of the Curtis Company was, the distributing agents and their undivided service to the Curtis Company constituted the foundation stone of the whole selling structure.

Mrs. Sturdevant handled no other than the Curtis publications. She was urged to take on *Every Week* by the

Crowell Company, but declined. She felt that the boys were doing better work by concentrating on one publication; that if she took on another publication she would have to teach them the selling points of that publication, and that their parents did not want them to do so; that she placed no restrictions on the boys selling other magazines, where their customers wanted them to furnish them; that she finds that about 50 Posts is as much as a boy ought to handle; that she had not encouraged them to sell more.

The personal character and morale of the district agents and the boys are illustrated by the testimony of these witnesses:

Q. Now, you are interested in your boys making all the money they can, aren't you?—A. I am more interested in their learning to be men, business men.

Q. Yes; I will agree in your case that is true; I think you are.—A. Yes, sir.

Q. And I think it is a very commendable thing.—A. I do not emphasize the money as much as the other.

Q. But I am asking you, Would you like to have them make money, too?—A. Oh, yes; the money is the measure of success in a way.

Mrs. Sturdevant declined to take on other magazines, saying:

Well, I believe in the boys concentrating on one thing. I believe in concentration. I think it pays me and pays the boys. I believe that to handle one line of goods and handle it well is better than to divide up.

Mrs. Whittelsey, another district agent in St. Louis, had 35 boys on her staff, and handled no other publications than the Curtis. She was also approached with a view to get the use of her organization of Curtis boys:

In August, 1917, I was asked to—a man came to the house. He told me he was representing the Pictorial Review, and asked me if I would take it on. I said, "No"; that I was not interested and I hadn't time. Well, he said it would not take any more time than I was devoting right now to it; that I had the organization and could do it while I was distributing the other papers.

Q. Did he mention the character of your organization in any way?—A. Yes; he said they were a fine class of boys, and they could sell the papers while they were selling the other papers.

The testimony shows that the effort to get the distributing district agents' boys of this Curtis organization was carried out even in small communities. McNerney was a miner at Goldfield, Colo., and there was a wholesale news company and a branch of the American News Company in that district, which wholesaled every magazine that came into it except Curtis', which was the only one McNerney handled. He had a small organization of boys, which he had built up and trained with the help of the Curtis Company, through their prizes and instructions. The personal character of the organization, dis-

tributing agent, and boys, and its relation to the Curtis Company, is shown by his testimony:

Q. How did you come to sell Curtis magazines?—A. Well, I was going to school and needed a little spending money, and I knew the district agent in Cripple Creek, and he thought he would give me a trial and started me out with 20 Posts.

Q. Did he give them to you or sell them to you?—A. He sold them to me.

Q. Twenty Posts a week?—A. That was the first week.

Q. And when you bought those 20 Posts and started to sell them did you know you were a Curtis boy?—A. Yes, sir.

Q. How did you know that?—A. Because he told me.

The testimony of Nelson, district agent at Omaha, shows clearly that the object in view was to get hold of the Curtis schoolboy organization. In that city both the American News Company and McLaughlin, a wholesaler, handled magazines. Nelson had 135 boys, and handled nothing but the Curtis publications, which took up his entire time. The proofs show that his boys were schoolboys; that the traveling representatives of the Curtis Company had aided him in instructing them and taking the general supervision of their work; that the boys had received special encouragement from the Curtis Company: "I have one boy that won a trip for him and his mother to Washington for the inauguration of President Wilson, and also at the same time won a pony and cart and harness"; that other boys had won smaller amounts, and he himself had obtained bonuses on account of the work done as distributing agent, the largest being a check for \$500; and that during the 16 years of his connection with the Curtis work he had earned bonuses approximating \$2,000. He was urged to take up Every Week.

The substance of their interview with me was that they wanted to get in with the boy organization, which I would not sanction, and that seemed to be about all there was to it.

The thoroughness with which this work of obtaining the use of the Curtis organization of boys was carried on is evidenced by the testimony of Dewey, a 16-year-old schoolboy, who, in addition to his school work, had 10 boys selling Posts; the contract being carried in his father's name. The proofs show that the Crowell Company visited him, but the witness declined to handle the magazines, because they "were in direct competition with the Curtis magazines, and I did not want to work them together."

The testimony of Alexander McLean is very suggestive. His son started out, as a boy of 12 years of age, to sell the Curtis publications. He made such a success of it that they gave him a certain district, and after he had had that for 4 or 5 years the company proposed to McLean to take the entire North Side in connection with his son. The father gives an account of the training the son had from the Curtis Company in his work. He says:

The most beneficial thing that ever happened to him. It has made a business man of him. The boy is now worth, as a boy 22 years old, he is worth probably \$10,000. He has made all of that with the Curtis publications, with the investments he has made of that money. And then he has got 375 boys; he is making business men the same way, practically out of all of them. They save their money; and the boy that don't save his money, he is no good at all. He might just as well turn him out. If the mother and the father don't take care of him, or both of them—it is the best business training for the child that has ever been put before the public, I don't care what it is. \* \* \* He is worth probably \$10,000 himself. Now, he has made that off of the Curtis people, and the investment he has made of the money he has made off of that. In other words, it has made a business man of him. I will take his word—it is personal, of course; it is my son—it has made a business man of him, that I will put him against any business man in the city of Chicago. That is what it has done for him.

Q. You attribute that to his training as a Post boy?—A. Yes, sir; the training that they have given, and what they are doing right now with every Curtis boy they have got. That is what it has done for them, always has done for them, and will do with them.

Q. What is it they are doing now, with respect to the Curtis boys you have now?—A. They give them free copies to start with. They give them all the encouragement they can in the way of teaching them how to sell goods and approach men, and go out and teach them how to save their money and what to do with their money. It is nothing but business training. It is not a little, quibbling business, either. The boys come to our place, and they buy them, and they sell them, just like they would in any other business. It is just as big business for these boys as Marshall Field's business is for him, and done the same way. The Curtis people furnish little books, and I have got one right here [indicating]. It is as simple a set of books as you can usually find—teaches them how to keep books. These little children, 10 and 14, are taught just as well how to keep their accounts, just as well as Marshall Field's and the First National Bank, or anybody else, and the Curtis people have been doing that for years, as I know positively.

Q. And these boys are also instructed right along in the proper methods of selling?—A. They certainly are.

Q. And in keeping their accounts?—A. They certainly are.

Q. And approaching?—A. Approaching people.

Q. Prospective customers?—A. Yes, sir.

Q. The merits of the article, and so forth?—A. These little, bashful boys will start that business, and it makes them self-assertive; they can put a proposition to a man just as well as a man can, and sometimes better. I will take these boys that have been trained under these Curtis Publishing Company systems of training, and I will put them against men in our stores, and find them better, and we have 350 boys.

Q. What is the class of the 350 boys?—A. They are the best class that you can get; mostly schoolboys, naturally. They devote their half day, and one day, and maybe two days to selling the Post. That is, the right kind of a boy, if he is drawing 50, he will stick to it until he sells them. If he is the wrong kind of a boy, he will bring most of them back. That is the kind of a boy we try to push along and teach him how to do it.

The proofs show that McLean and his son had 350 boys in their organization. While they allowed their boys to sell other publications occasionally, they did not encourage them, for the reason that a divided allegiance

would destroy the efficiency of the organization. In that regard McLean testifies:

As a business proposition, you can not do two things, and do them practically alike. You are going to neglect one or the other. If they sell the Curtis Publishing Company's things and somebody else's they are going to neglect one or the other.

From these proofs on the subject-matter of which the Commission made no findings whatever, it appears by the undisputed testimony that the Curtis Company through a series of years, at large expense, and by the creation of personal relations, had built up both a distributing and a selling organization that was efficient, personal in character, and that was, substantially, engaged in distributing and selling exclusively the Curtis Company's publications; that with a view to having this organization cease being the exclusive agents of the Curtis Company, and with a view to enlisting the schoolboy salesmen of the Curtis organization, the Pictorial Company and the Crowell Company began and carried on a widespread and systematic campaign, with the object of obtaining the service primarily of the district distributing agents, and secondarily of the local boy salesmen of the Curtis Company. The proofs show that in most localities where this attempt to get the distributing district agents of the Curtis Company to handle their publications was made there were other wholesale distributors already employed in distributing other magazines, and through whom these two companies could have distributed their own. The proof, by those experienced in getting these periodicals—and there is no proof to the contrary—is that this boy organization is composed almost wholly of schoolboys, that the time at their disposal and their capacity to sell is limited, and that the ordinary limit of a boy's selling capacity is about 50 magazines; that if the boy undertook to sell other publications it would result in diminishing his sales of the Curtis publications, as these two firms are in competition with those of the Curtis Company, and the handling of the two publications by the same boy would destroy the morale and efficiency of the Curtis boy organization.

Such being the proven and undisputed facts, and the commercial gain to these two competing companies, if they had succeeded in their plan, being to break down an efficient selling organization which the Curtis Company had, through a long term of years, at great expense, and with much effort built up, the crucial question arises: Was the insertion by the Curtis Company in its contract with its distributing agents that without the written consent of the Curtis Company its distributing district agents "will not \* \* \* act as agent for or supply at wholesale rates any periodicals other than those published by the publisher," evidence of unfair competition in business; or, stated in the common business

thought of those in that branch of commerce, is it evidence of unfair business in magazine publishing to have an exclusive distributing agent? And, indeed, the question of unfair business is even narrower, when the test of unfair business is applied to what was actually done in this case; for, while the restrictive wording of the contract was broad in scope and covered all magazines and all publishers, yet in its practical enforcement it was only enforced against these 2 competitive firms, and was not enforced against some 400 other publishers and magazines who used the services of such agents in a fair commercial way and did nothing to undermine the loyalty, efficiency, and personal relation of these exclusive agents to their principal.

Having thus considered the general situation which led to the making of these contracts, and without an understanding of environment and the causes which led to the making of a contract, there can be no just construction of a contract, let us now turn to the question of the violation of the Clayton Act.

In this regard we note that paragraph 3 of the Commission's findings, which finds:

"The defendant 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 agents 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"—

was addressed to the Clayton Act. That act provides that it should be unlawful for one engaged in commerce—

"to lease or make a sale or contract for sale of goods, \* \* \* on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods \* \* \* of a competitor \* \* \* of the lessor or seller," etc.

Seeing, then, that a lease or sale is the thing forbidden by the Clayton Act, that in this case the alleged sale was made by written contract, and that this written contract of sale was the unlawful contract which the commission forbade the Curtis Company to enforce, it is apparent that the first and basic question in the case must be directed to an examination of this written contract and a determining whether it is one for the sale of goods, etc., for, if it is not for a sale, the requirements of the Clayton Act, namely, "a sale or contract of sale," do not appear in this written contract, and therefore, no sale being shown in the record, it is the duty of the reviewing court to vacate an order to desist from violating the Clayton Act. So far, therefore, as the Clayton Act is concerned, the questions involved in the present case are: First, is the Clayton Act limited to sales or contracts for sales of goods, and, second, was the present contract one of sale?



The question of sale being the significant and controlling factor in the third finding, and that being determined, our next question would concern the second finding, which is the same, in substance, as the third finding, with the additional element that such written contract was alleged to be in the alternative, either for sale or *distribution*; and the next question, therefore, would be: Does the making and enforcement of the foregoing contract, whether it be a contract of sale or distribution, constitute unfair competition in business?

Turning to the first question, let us determine whether the quoted clause of the Clayton Act is limited to sales or contracts of sales. The only answer to this is the act itself. Its words are "to lease or make a sale or contract for sale." It makes unlawful conditions, agreements, or understandings—

that the lessee or purchaser thereof shall not use or deal in the goods \* \* \* of a competitor or competitors of the lessor or seller.

The words "lease," "sale," "contract for sale," "lessee," and "purchaser" being the words used, and no other relation than lease and sale being mentioned, there is no expressed purpose in the clause quoted to make it cover any other subject than leases, sales, or contracts for sales, and to embrace no other persons than lessees and purchasers. The words are so clear they require no construction, and to needlessly construe, in order to broaden the scope of the statute, whether done by the Trade Commission in administering, or by this court in supervising the administration of, the statute, would be for either or both such agencies to write into the statute what Congress has not expressly written. Not only has no ground been shown for contending that by necessary implication the statute covered other subjects than leases, sales, contracts for sales, or other persons than lessees and purchasers, but the Supreme Court had in *Motion Picture Patents Co. v. Universal Film*, 243 U. S., 518, 37 Sup. Ct., 416, 61 L. Ed., 871, L. R. A., 1917E, 1187, Ann. Cas., 1918A, 959, quoted below, indicated its view that the clause in question was passed to meet a clearly defined controversy which concerned leases and sales. The case of *Henry v. Dick*, 224 U. S., 1, 32 Sup. Ct., 364, 56 L. Ed., 645, Ann. Cas., 1913D, 880, involved the sale of a patented machine, and the decision upheld a sales condition that other than supplies made by the seller should not be used in its operation by the buyer. Such being the adjudged law of the land, the Supreme Court, in *Motion Picture Patents Co. v. Universal Film*, 243 U. S., 518, 37 Sup. Ct., 421 (61 L. Ed., 871, L. R. A., 1917E, 1187, Ann. Cas., 1918A, 959) not only overruled that case but changed the decided law, saying:

It is obvious that the conclusions arrived at in this opinion are such that the decision in *Henry v. Dick Co.*, 224 U. S. 1, must be regarded as overruled.

But in doing so that court suggested, as we have said, its view that Congress, in passing the quoted section of the Clayton Act, had done so in order to meet the decision in *Henry v. Dick*, *supra*, the opinion stating:

We are confirmed in the conclusion which we are announcing by the fact that since the decision of *Henry v. Dick Co.*, 224 U. S. 1, the Congress of the United States, the source of all rights under patents, as if in response to that decision, has enacted a law making it unlawful for any person engaged in interstate commerce "to lease or make a sale or contract for sale of goods \* \* \* machinery, supplies, or other commodities, *whether patented or unpatented*, for use, consumption, or resale, \* \* \* or fix a price charged therefor \* \* \* on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use \* \* \* the goods, \* \* \* 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." (38 Stat., 730.)

And in that connection it will be noted that in the dissenting opinion in *Henry v. Dick* (see 224 U. S., 50; 32 Sup. Ct., 381; 56 L. Ed., 645; Ann. Cas. 1913D, 880) the Chief Justice, with two justices concurring, suggested the very congressional action which, we submit, was afterwards embodied in the Clayton Act, stating that their dissent would—

serve to make it clear that if evils arise their continuance will not be caused by the interpretation now given to the statute, but will result from the inaction of the legislative department in failing to amend the statute so as to avoid such evils.

That shortly after this decision was rendered Congress passed the clause in question gives additional weight to the view that Congress—

as if in response to that decision, has enacted a law making it unlawful for any person engaged in interstate commerce "to lease or make a sale or contract for sale of goods," etc.

Seeing, then, that the interstate commerce acts made unlawful by the Clayton Act were limited to the lease and sale of goods, we turn to the second question, namely: Did the present contract "lease or make a sale or contract for the sale of goods"? We say "present contract," for as that contract is the one now used, and whose future use is the practical commercial factor involved, we pass by all the preceding contracts and confine ourselves to the one on which the Curtis Company stands as the assertion of its lawful right to contract with its distributing agents. Turning, then, to this present contract of the Curtis Company, which is Exhibit D of its answer, and the pertinent parts of which are printed in the

margin,<sup>1</sup> we note, first, that the agreement, which is entitled a "district agency agreement," is in form and verbiage an appointment by a publisher of an agent, and an agent for limited territory and for a mutually optional time, for the purpose of (a) selling, and (b) distributing its magazines. Now, there are no words in the contract which purport or contemplate the sale of such magazines, and there is express provision if (a) a sale, or (b) a distribution, to third parties, is not effected, the magazines consigned are to be returned to the publisher. Indeed, the nature of the transaction, the necessary haste to get the magazines into the hands of the boys at once, shows of itself that there was no reason for transferring title by sale. It was not the handling of commodities of which sales would naturally be made. It was a contract for distributing and speeding up deliveries of an article whose whole value depended on the haste with which it passed from the agent's possession. Confirming these statements, we note that in clause 1, "appoint the said second party as district agent for the Saturday Evening Post," etc., are words aptly used in constituting an agency, viz, "appoint," and of restricted territory, "district agent."

We note that clause 3 provides for the return and credit, at consignment prices, of unsold copies, and that clause 5 provides for the payment of interest at 5 per cent on the money deposit, made by the agent, as security for the magazines consigned. As to the agent making sales of the magazine, clause 8 obligates him to sell a certain number of copies of the magazine, and clause 9 binds him to

<sup>1</sup> To appoint the said party of the second part as district agent \* \* \*

2. To supply the district agent with copies of the Saturday Evening Post and of the Country Gentleman at two and one-half cents (2½¢) each, and of the Ladies' Home Journal at nine and three-quarter cents (9¾¢) each, transportation charges prepaid, provided that if the district agent fail to prove himself entitled to the wholesale rates by wholesaling each publication to subagents, and by sending on time the required fully itemized, subagents' sales reports, or if the district agent fail to maintain a net sale of his quota of *any one* publication, as required by clause 8, the publishers may then charge three cents a copy for the Saturday Evening Post and for the Country Gentleman, and eleven cents a copy for the Ladies' Home Journal, or may, at their option, terminate the contract after thirty days' notice and appropriate the cash security;

3. To give credit to the district agent, as the price paid, for unsold copies returned in accordance with the regulations governing returns, as stated on the order blanks last issued by the company; \* \* \*

8. To sell at least \_\_\_\_\_ copies of each issue of the Saturday Evening Post, at least \_\_\_\_\_ copies of each issue of the Ladies' Home Journal, and at least \_\_\_\_\_ copies of each issue of the Country Gentleman;

9. To supply subagents, both boys and dealers, with the Saturday Evening Post and the Country Gentleman at three cents a copy for resale at five cents a copy, and with the Ladies' Home Journal at eleven cents a copy for resale at fifteen cents a copy, and to make deliveries early on the morning of the sale date;

10. To refrain from displaying, delivering, or selling any copies to boys, dealers, or retail customers *before* the authorized sale date, as specified on the printed order blank furnished by the publishers;

11. To refrain from selling any copies in any territory known to be controlled by another agent under contract; \* \* \*

13. To refrain hereafter from wholesaling to boys or dealers (and from attempting to influence any Curtis agent to sell) any periodicals other than those published by the Curtis Publishing Company, and to refrain from furnishing any other publisher or his agent with the names and addresses of any Curtis agents, without first obtaining the approval of the publishers; \* \* \*

16. To permit the publishers to retain, throughout the life of this agreement, possession of the \$\_\_\_\_\_ herewith remitted by the district agent as cash security for his performance of his several obligations hereunder.

deliver the magazine to dealers and boys "early on the morning of the sale date" and at certain specified prices. We also note that, by clause 10, the agent binds himself not to display, distribute, or sell any of the magazines before an authorized sale date, and by clause 11 not to sell any copies in territory controlled by another agent. All of these and other details that might be cited evidence that the relation created by this contract, and by its expressed terms meant to be created, was one of agency, and that there is an entire absence in the contract of any terms or words usual or requisite to effecting or evidencing a sale, as well as of circumstances inviting or necessitating a sale.

We have not overlooked the fact that the contract provides for the maintenance by the agent in the hands of the publisher of an advance sum of money sufficient to indemnify the publisher for all magazines forwarded. But in our judgment this deposit can not, in view of the right of return, be regarded as a payment, but rather as an indemnity to secure payment, for all copies the agent does not return. It is a fund on which the publisher is obliged to pay a substantial interest rate. It is an indemnity, and the fact that such indemnity is in money, instead of a bond or obligation to pay money, is of no significance, and the crucial question still remains: Is the contract which it indemnifies one of sale to a buyer, or consignment to an agent, for subsequent sales or distribution? It is, moreover, an indemnity fund for which the Curtis Company is bound to account to the agent. Nor is the accounting price of the magazines even fixed by the contract. It depends on the future efficiency of the agent. Nor is the fact to be overlooked that the contract, taken as a whole, could not be satisfied by the mere fact of sale to a buyer, for, if the transaction ended with a sale by the publisher, the whole spirit and purpose of the contract would be lost, which is that the distributing agent should distribute to the boys and the boys distribute to their personal customers.

The subject of the contract is a large quantity of magazines, and the object of the contract is not to vest ownership of them in the other party to the contract, but to pass those magazines by the use of other agencies into the hands of the public. And the object of placing these magazines in the hands of the public is not alone to get from the real buyer of the magazine its comparatively small price, but by placing it in the hands of a vast number of buyers to thereby enable the publisher to obtain that advertising patronage which is the financial mainstay of all such periodical publications. It has therefore seemed to us that the unique character of the subject-matter of this contract, the object the publisher had in view, and the phraseology, conditions, and obligations of this contract, unite to make the contract one of consign-

ment to a distributing agent, who was furthering the business of his principals, and not one of a buyer, who thereby acquires title for his own individual purposes.

Such being the case, we hold the Commission erred in the legal construction of this contract, and therefore had no proof before it to find, as it did in its third finding, that "the respondent has made *sales* of its magazines to, or entered into contract for the *sale* of the same, with certain persons," etc., and therefore its legal conclusion from such findings, viz, "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 the Clayton Act, was in error, as was also the part of its decree which enforced such conclusion.

Having thus found that the distributive agency contract was not a violation of the Clayton Act, we next turn to the third question, namely: Does the making and enforcing of that contract, whether it be a contract of sale or distribution, constitute unfair competition in business? What is unfair competition in business? Now, while Congress has enacted, as we have seen, "that unfair methods of competition in commerce are declared unlawful," it has not defined unfair competition, or specified what shall constitute unfair competition. From this absence of definition, it is reasonable to infer that it was in the mind of Congress that, as unfair competition had long been a subject of judicial scrutiny, determination, and was involved in remedial suits at law for damages and of injunctive suits in equity, to prevent continuance, the definition and ascertainment of what constituted unfair competition was a legal question which the law could determine. Indeed, in the nature of things, it was impossible to describe and define in advance just what constituted unfair competition, and in the final analysis it became a question of law, after the facts were ascertained, whether such facts constitute unfair competition in business, for the test of fairness, as of fraud, is the application by the law of moral standards to the actions of men.

While it was the exclusive right of a jury in a case at law to find the facts in any given case, it still remained the duty of the trial judge, before entering judgment, to decide whether from those facts the injury of unfair competition in business could be lawfully inferred. So, also, when the case was in equity, while it was the province of the judge to find the facts, it also was his duty, and as well the duty of a reviewing court, to decide whether, upon those facts so found, the injury of unfair competition in business existed. Presumably, with this recognized existing jurisdiction of Federal courts over cases of unfair business competition in mind, Congress passed the Trade Commission Act, the pertinent parts of which we have heretofore noted in the margin.

Such, then, being the existing and by the act unchanged jurisdiction of such courts in reference to questions of unfair competition between business competitors generally, and that jurisdiction being exercised on well-established legal principles, it follows that when Congress invoked an exercise of supervisory power on the part of such courts over the action of the Trade Commission, and enacted that this supervisory power should be exercised before the orders of the Trade Commission could be enforced, it would seem to follow that the supervisory powers which the court was meant and intended to exercise were the usual powers exercised in the usual way by those courts when exercising their power to review, and while the act provided that the findings of fact made by the Commission were final and conclusive, it still remained the duty of the supervising court to determine the same legal questions which a supervising court had in reviewing actions of the trial court, namely, whether under all the facts found by the Trade Commission a case of unfair business competition was established. That Congress meant to invoke some supervisory power precedent to the Trade Commission enforcing its orders is apparent, and unless that invoked jurisdiction meant in effect to submit to the judgment of the Circuit Court of Appeals the legal question whether the facts found by the Commission established that the competition was by the judgment of law unfair, and if that supervisory power did not charge the Circuit Court of Appeals with the legal duty of judicially deciding whether the facts found were such as warranted injunctive relief by the Commission, we may well ask the question, What supervisory power did Congress intend should be exercised by the Courts of Appeals? For, if such supervisory power, which is one of substance and judicial in its nature, is not to be exercised by that court, then it is manifest that the supervisory power which Congress invoked was one of mere shadow and not of substance.

To our mind the situation is wholly different from that of the Interstate Commerce Commission. There the basic question is the fixation of rates, which is a question of business discretion, and in no sense a legal, judicial, or moral one. Manifestly, Congress did not mean to confer upon the Trade Commission the power to grant injunctions in cases of business competition, where courts would not be justified in granting injunctions. Indeed, when Congress, in invoking such reviewing and supervisory power, said "the court \* \* \* 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," it was using language which aptly described the customary jurisdiction and power

theretofore exercised by Circuit Courts of Appeals in reviewing cases of alleged unfair business competition.

Such, then, being the supervisory jurisdiction conferred on this court, we turn to the question before us and inquire whether the record as a whole, which includes not only the findings of fact made by the Commission but also the proofs in regard to which the Commission made no findings, disclose a case of unfair business competition on the part of the Curtis Company, which warrants a decree which in effect enjoins them from successfully continuing a distributing and selling agency they have utilized for years.

Before taking up that question we note the fact that while this proceeding was pending before the Trade Commission the Pictorial Review Company invoked the jurisdiction of the United States District Court for the Southern District of New York by a bill filed against the Curtis Publishing Company to enjoin unfair business competition. That court, in an opinion, reported at 255 Fed., 208, said:

What complainant evidently desires is not merely to sell to these wholesalers, which it can do already in cases where the wholesalers have a retail trade, and to the extent of that retail trade, but to avail itself of the organization of the Curtis boys, built up by the ingenuity, labor, and capital of the defendant. The defendant, in insisting upon maintaining the integrity of its system, is not in my opinion guilty of unfair trade. On the contrary, the complainant, in attempting to avail itself of this system, is engaging in unfair trade. That it can not build up a system of its own, if it desires to do so and will go to the trouble and expense, I do not believe. It is attempting here to secure a preliminary injunction to prevent the defendant from contracting with the latter's district agents not to market the Pictorial Review through boys and dealers. To grant such an injunction would break up what I think is a perfectly legitimate system for the promotion of sales of the defendant's magazines, and would enable the complainant, without expense, to employ the organization built up and fostered by the defendant.

An examination of that case shows that, upon facts which in no wise controverted the fact findings of the Commission heretofore set forth, that court held the Curtis Company's course did not constitute unfair business competition. We see no reason to differ from the conclusion reached by that court, and, unappealed from as it is, it judicially and finally adjudged that as between these companies the Curtis Company has not been guilty of unfair competition in business. And such matter being as between these parties finally adjudged, two things follow: First, the competition of the Curtis Company is adjudged not unfair; and, second, no court could thereafter in a suit between these parties issue an injunction to enjoin such competition.

Of course, the decree in that case, where private rights only are concerned, binds only the parties, and can in no way affect the jurisdiction of the Trade Commission; but the fact that while the business relations of these parties

were under review by the Commission one of the parties invoked, as it had a right to do, the jurisdiction of a court in equity and sought to enjoin such alleged unfair competition, and that court, after hearing, held that the defendant's business operations did not constitute unfair competition, but, on the contrary, the complainant's actions did, and the Trade Commission thereafter, upon similar facts shown to it, held the Curtis Company was guilty of unfair competition in business, the mere existence of such an anomalous and contradictory holding of legal conclusion upon the same general facts in and of itself suggests that in the exercise of our reviewing, supervisory jurisdiction it is for us to decide whether the legal question before the Trade Commission was rightly decided by it, and in deciding that question we may give due consideration to the reasoning and opinion of the court referred to, with a view to avoiding conflicting holdings under substantially similar states of fact—

But, before taking up that question, let us make it clear that we are not violating, or in any way ignoring, the statutory limitation on our supervisory reviewing jurisdiction, namely, "that the finding of facts, if supported by testimony, shall be conclusive." The findings of fact by the Trade Commission we have quoted in full.<sup>1</sup> Those findings we accept as established, and they are the sole foundation on which the order of the Commission is bot-tomed. "From the foregoing findings, the Commission concludes," is its own statement.

But the case did not turn on this restricted phase, which, in our judgment, totally ignores the real situation, and makes no finding on those facts which are really determinative of the question whether the competition of the Curtis Company was unfair business competition. That real situation, as we have seen from the uncontradicted proof, among other features, consists of, first, the crea-tion, through years, with great effort and large expense, of the Curtis Company's schoolboy selling organization; second, that the district distributing agents constitute the control, morale, recruiting, and existence of the school-boy selling organization; third, the efforts of two com-petitors to appropriate that selling agency to themselves, with the undisputed consequence of undermining its morale and destroying its efficiency; and, lastly, that the purpose of the Curtis Company in putting in its contract the clauses objected to was not to interfere with commerce, or with the circulation of the 400 magazines, but solely to thwart the unfair plan of 2 unfair competitors, who sought to undermine the undivided loyalty of the Curtis distributing district agents, and through them disrupting the Curtis schoolboy organizations.

Now, it is very apparent that, where the supervisory review by the Circuit Court of Appeals, which Congress

<sup>1</sup> See p. 584.



invoked, provided that that court "shall have power to make and enter *upon the pleadings, testimony, and proceedings* set forth in such transcript, a decree," it is the province, and indeed the duty, of the reviewing court, to consider, not merely the findings of the Commission, but the whole record, the whole proofs, and the whole proceeding, and to say, first, whether, in view of all the proofs, the limited facts found by the Commission really passed on the pertinent and decisive facts, and so warranted an injunction; and, second, if such limited facts do not reach the merits, and do not alone legally justify and warrant a decree of unfair competition and injunctive relief, then, since Congress has enacted that the Circuit Court of Appeals "shall 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," it is quite clear that it is not only the province, but the duty, of the Circuit Court of Appeals, and indeed the expressed purpose of Congress that such reviewing court should itself examine the pleadings, the entire testimony and proceedings, and upon such inclusive examination determine whether the facts found by the Commission and the proofs on which the Commission made no findings, and which the court, in the absence of such finding, itself finds and determines, legally established a case of unfair business competition by the Curtis Company.

Taking, therefore, the record, proofs, and pleadings as a whole, we hold as a legal and judicial conclusion that the proofs are not such as can support a judgment or decree of unfair competition on the part of the Curtis Company toward the Pictorial Company and the Crowell Company. That company legitimately, and in course of fair business dealing, built up and recruits by its distributing district agents a selling agency of schoolboys, the whole efficiency of which consisted in undivided loyalty and single-hearted service, primarily of the district agents and secondarily of the boys, to that company. The whole situation was unique. This was not a case of commerce in the ordinary channels of salesmanship. The Curtis Company, by the personal work of their distributing agents, selected boys of tender years, whose work and business was school work, whose time was limited, and whose capacity of salesmanship was restricted to a magazine that sold for 5 or 10 cents, and to a sale of approximately not exceeding 50 copies. Had the magazine been one that sold for 25 or 30 cents, it is quite evident the boys could not have sold it. Were they to try to sell more than 50 it would be at the expense of their school duties, their play time, and the wishes of their parents. There can be no doubt under the proofs that the Curtis Company, in building up this boy selling organization through the distributing district agents, was not throttling or,

indeed, dealing with the ordinary channels of commerce, but was enlarging the sphere of commerce by enlisting in its service the selling power of schoolboys who, but for this organization, would not only not have taken part in present commerce but who would have missed the commercial training the Curtis Company alone gave them for future commerce, and the Pictorial Company and the Crowell Company had no hand in giving them, and, indeed, it seems to us that these companies will, if this injunction here complained of was enforced, succeed in really throttling commerce by disrupting and destroying an efficient agency which is extending commerce.

Moreover, it is clear that these companies as well as other publishers already have full, unrestricted circulation agencies. The proofs show that the American News Company still continues its general business of distributing the publications of all publishers who choose to use its service; that there are upwards of 400 different magazines which are distributed and circulated solely through its agency and the United States mail, and that its service reaches every retailer of magazines in the United States. In that regard the proof of the scope of the distribution facilities of the News Company and of their being open to and used by the particular competitors of the respondent, toward whom they are alleged in this proceeding to have used unfair business competition by the contract in question, and that the retailers to whom the contract forbids its distributing agents to furnish other magazines can be, and in fact are, furnished with all other magazines, including the magazines of the complaining competitors of the Curtis Company, by the American News Company service. All this is shown by the proofs of the Government, in the testimony of witnesses, among whom we quote from Thomas H. Beck, of the Crowell Company, a complaining competitor:

Q. Will you now describe how the distribution of magazines is made through the American News Company—how do they operate?—A. We supply our publications to them, and they distribute them through their branches, and their branches redistribute to retail news dealers. They cover the entire country with that service. \* \* \*

Q. Have you been able to reach all the retail dealers through the agency of the American News Company?—A. Yes; we can reach all the retail news dealers through the American News Company. We can reach them—in other words, you can ship to them, because, if their location and address are known, you can make the shipments. \* \* \*

Q. Now, you have not depended on the American News Company entirely as a matter of getting your magazines to the people?—A. Yes, sir; in the matter of single copy sales, we practically depend on them.

The proofs further show that through these retailers they reach the boy salesmen who get their supplies from these retailers. In that regard, the same witness, speaking of the retailer, says:

He gets the star edition for sale over his own counter, and gets the boy edition for sale to the boys.

Q. Do you know of any place or locality where a retailer could not get, through the American News Company, the star edition of the magazine you refer to, and your other magazines?—A. I do not.

To the same effect is the testimony of B. A. Mackinnon, circulation director of the Pictorial Review, a magazine published by the Pictorial Company. Mr. Mackinnon's testimony was:

Q. Is it not possible for any retail dealer in any part of the United States to get copies of your magazines through the American News Company, for sale?—A. Yes, sir.

Q. And it has always been so; is not this the fact?—A. As far as I know; yes, sir.

It will thus be seen that the retail dealers in every part of the United States were reached for many years by the Curtis Company and its competitors, and that this service and method of reaching the retailer's customer and of the dealer selling to boy salesmen is now open to and used by the competitors of the Curtis magazines. From this it will be seen that when the Curtis Company, by clause 13, kept its distributing agents from "wholesaling to \* \* \* dealer \* \* \* any periodical other than those published by the Curtis Company \* \* \* without first obtaining the approval of the publishers," they did not prevent or hinder such retailer from getting the publications of these other publishers through the American News Company.

It will also be noted that, in dealing with the magazine business, we are not dealing with anything that has been made the subject of monopoly, sole supply, or by deprivation of which the public has been deprived of anything it desires. There is no suggestion in the arguments or proofs in the record that any person who desires any one of the 400 magazines of the country, including these competing magazines, can not readily get such magazine from any retailer to whom he applies in person, have it regularly delivered to him by a boy salesman who deals with such retailer, or directly from the publisher through the mails. Indeed, the latter agency is the customary one by which we usually get our magazines.

We note these facts, because this freedom of access to the consumer and the entire absence of monopoly and nondeprivation of the public have been regarded as an important element in the decision of cases of alleged unfair business competition. Thus in *Ford v. Boone*, 244 Fed., 341, 156 C. C. A., 627, the Circuit Court of Appeals of the Ninth Circuit says:

It is to be borne in mind that the plaintiff has no monopoly of the automobile business, but only of one out of almost innumerable kinds of cars, all differing in detail one from the other, but of the same general type, and all designed to be used in the same general manner and for the same general purpose. If, as was admitted to be the fact in the Motion Picture Patents Company case, the

plaintiff's car were wholly indispensable to the carrying on of a great industry, and if its plan of marketing were such as to constitute an instrument of oppression or favoritism, then the courts should perhaps be astute to discover means by which to disorganize its system and to encourage competitive effort as between the salesmen or distributors of its product; but such is not the case.

Indeed, there is no proof in this record that any harm has been done in the past by the business methods followed by the Curtis Company, nor is there any proof that commerce has been in any way throttled thereby. By this order of the Commission an injunction is now issued, which, whatever may be said to the contrary, disrupts and forbids continuation of a business course openly pursued for years, and takes away, without compensation, the asset of good will, which can not be bought with money, but which is the result of years of personal service and loyalty.

Injunction is so drastic and prohibitive a remedy, its issuance by a court of equity so carefully safeguarded, that to have substantial question of the wisdom of such issue often suffices to withhold. To doubt is to decide, and this well-founded principle of equity in itself would lead a court of original jurisdiction to deny the strong arm of injunctive relief. But in this case the foundation of our order is not doubt, but certainty; for, accepting in their entirety and finality all facts found by the Commission, but taking the whole record and the proofs on which the Commission has made no finding, we are satisfied, as the statute provides, "upon the pleadings, testimony, and proceedings set forth in the transcript" the charge of unfair methods of competition could not be legally adjudged. If this was a case where a trial court had submitted these proofs to a jury from which to find a verdict of unfair business competition, a reviewing court would be constrained to set such verdict aside as not having testimony to support it.

In passing this act and granting to a Commission power in a new and untested field to issue injunctions which should stop and prohibit commerce, we are of opinion that Congress, in invoking the reviewing supervision of Federal courts, experienced in review, meant that those courts should exercise that reviewing power as they had been accustomed to do it theretofore. So viewing the statute, and so examining the whole record, we consider it the duty of this court to make effective the power of "setting aside the order of the Commission" which Congress so enacted.

Let a proper decree be drawn.

WINSTED HOSIERY CO. v. FEDERAL TRADE COMMISSION.<sup>1</sup>

(Circuit Court of Appeals, Second Circuit. April 13, 1921.)

No. 200

1. TRADE-MARKS AND TRADE NAMES KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—TRADE COMMISSION CAN ONLY PREVENT UNFAIR COMPETITION.

The Federal Trade Commission is authorized by act September 26, 1914, paragraph 5 (Comp. St. par. 8836e), only to inquire into unfair methods of competition in interstate and foreign commerce if so doing will be of interest to the public, and to issue an order requiring a person or corporation employing unfair methods to desist from doing so, but is not made a censor of commercial morals generally.

2. TRADE-MARKS AND TRADE NAMES KEY NO. 80½, NEW, VOL. 8A KEY-NO. SERIES—MISBRANDING WHICH DECEIVES ONLY CONSUMERS IS NOT UNFAIR COMPETITION, WITHIN TRADE COMMISSION'S JURISDICTION.

The practice by an underwear manufacturer of branding its products as wool, merino, etc., when in fact they were composed only partly of wool or merino, which was shown to be in conformity to the universal custom among manufacturers of such articles, and not to deceive the trade, though it did mislead some customers, is not unfair competition, within the Trade Commission act (Comp. St. pars. 8836a-8836k), so that the Trade Commission can not order the manufacturer to desist from such practices.

(The syllabus is taken from 272 Fed. 957.)

Petition to Revise Order of the Federal Trade Commission.

Petition by the Winsted Hosiery Co. to revise an order of the Federal Trade Commission. Order reversed.

Certiorari granted 255 U. S. —, 41 Sup. Ct. 625, 65 L. Ed.

Wood, Malloy & France, of New York City (M. J. France, of New York City, of counsel), for petitioner.

Adrien F. Busiek, J. T. Clark, and Marvin Farrington, all of Washington, D. C., for respondent.

Before Ward, Hough, and Manton, circuit judges.

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<sup>1</sup> Reviewing orders of the Commission in *Federal Trade Commission v. Winsted Hosiery Co.*, 2 F. T. C., 262 and 3 F. T. C. 189. Petition of the Commission for writ of certiorari in this case was granted by the Supreme Court on June 6, 1921.

WARD, *Circuit Judge*:

October 30, 1918, the Federal Trade Commission issued a complaint (No. 214, docket page 75 herein) against the Winsted Co. for a violation of section 5 of the act of September 6, 1914, it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public. The particular charge made was:

PARAGRAPH THREE. 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.

The answer of the defendant set up among other things:

PARAGRAPH TWO. Denies each and every allegation contained in paragraph marked "Paragraph Three" of the complaint herein, except that the respondent admits that for more than one year last past it has in the conduct of its business manufactured and sold in commerce (as set forth in the complaint herein) and labeled, advertised, and branded certain lines of underwear as "Men's Natural Merino Shirts," "Men's Gray Wool Shirts," "Men's Natural Worsted Shirts," "Australian Wool Shirts," "Men's Natural Wool Shirts." And respondent further admits that such underwear so manufactured and made are not composed wholly of wool.

For a further and separate defense to the complaint herein, respondent alleges as follows:

PARAGRAPH THIRD. That for the past 20 years and at the present time it has been a general custom and practice in the underwear business to manufacture, label, advertise, and brand underwear as "natural merino," "wool," "natural wool," "natural worsted," and "Australian wool" when such underwear so described is not composed wholly of wool, but on the contrary are composed only in part of wool, varying in the percentage of wool according to the different mills manufacturing such underwear, to meet the varying demands of the trade solicited and served; and, further, that said general custom and practice has been and now is universal in the underwear trade throughout the United States and has been followed by all the manufacturers engaged therein; and, further, that said general custom and practice has been and now is well known to and recognized by the distributors of underwear throughout the United States.

For the purpose of expediting the proceeding and of avoiding the time and expense incident to a hearing, a statement of facts was agreed upon which contains among other things:

PARAGRAPH SEVEN. That for the past 20 years it has been a general custom and practice in the underwear business to manufacture, label, advertise, and brand underwear and such wearing apparel as "natural merino," "wool," "natural wool," "natural worsted," "Australian wool," when in fact such underwear so described is not composed wholly of wool, and is composed only in part of wool, varying in the

percentage of wool according to the different demands of the trade solicited and served; that this custom and practice is general and universal in the underwear trade throughout the United States and is followed by manufacturers engaged therein; that there are a few manufacturers of underwear whose products are composed wholly of wool and are branded and labeled by them as "all wool"; that large quantities of underwear and similar wearing apparel has been imported into the United States from foreign countries and it comes into direct competition with the underwear manufactured in the mills throughout the United States; that the underwear and similar wearing apparel so imported into the United States has been and now is labeled, branded, and advertised as "wool," "merino," and "worsted" underwear in accordance with the general custom and practice in the underwear trade in the United States, although the said underwear is not composed wholly of wool, but, on the contrary, is composed partly of wool in varying percentages.

The Commission filed its conclusion of law as follows:

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."

And issued its order to cease and desist as follows:

Now, therefore, it is ordered, that the respondents, Winsted Hosiery Company, 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.

March, 1920, the Winsted Co. filed its petition in this court to set aside the order. Thereupon the Commission applied for permission to take additional evidence under section 5 of the act, which was granted. A great deal of testimony was taken by the Commission which fully established that the trade was not misled in any respect by the label complained of. But some witnesses testified that in their opinion some part of the consuming public was or might be misled into thinking the underwear so described was pure wool.

January 14, 1921, the following modification of its original order to cease and desist was issued by the Commission:

This proceeding having been heard by the Federal Trade Commission upon complaint of the Commission, the answer of the respondent, the statement of facts, agreed upon by counsel for the Commission and respondent, and upon the additional evidence taken for the Commission under an order of the United States Circuit Court of Appeals for the second circuit, dated October 18, 1920, and the Commission having

by reason of such additional evidence, modified some of its original findings and adopted new findings as to the facts and adopted its conclusion that the respondent has violated the provisions of the act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," it now recommends the following modification of its original order to cease and desist herein, dated January 20, 1920:

It is now ordered that the respondent, the Winsted Hosiery Co., its officers, agents, representatives, servants, and employees, do cease and desist from employing or using as labels or brands on underwear or other knit goods not composed wholly of wool, or on the wrappers, boxes, or other containers in which they are delivered to customers, the word "merino," "wool," or "worsted," alone or in combination with any other word or words, unless accompanied by a word or words designating the substance, fiber, or material other than wool of which the garments are composed in part (e. g., "Merino, wool, and cotton"; "wool and cotton"; "worsted, wool, and cotton"; "wool, cotton, and silk"), or by a word or words otherwise clearly indicating that such underwear or other goods is not made wholly of wool (e. g., part wool).

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.

The Commission is not made a censor of commercial morals generally. Its authority is to inquire into unfair methods of competition in interstate and foreign commerce, if so doing will be of interest to the public; and if such method of competition is prohibited by the act, to issue an order requiring the person or corporation using it to cease and desist from doing so. We have heretofore so understood the extent of the Commission's authority in *Federal Trade Commission v. Gratz*, 258 Fed. Rep. 314; affirmed 253 U. S. 421 and *New Jersey Asbestos Co. v. Federal Trade Commission*, 264 Fed. Rep. 509.

In this case there was obviously no unfair method of competition as against other manufacturers of underwear. The labels were thoroughly established and understood in the trade. There was no passing off of the petitioner's goods for those of another manufacturer. There was no combination in restraint of trade nor any attempt to establish a monopoly. Manifestly no other manufacturer of underwear could have maintained a suit against the petitioner for unfair competition or for an injunction or damages under the antitrust acts. Assuming that some consumers are misled because they do not understand the trade signification of the labels or because some retailers deliberately deceive them as to its meaning, the result is in no way connected with unfair competition, but is like any other misdescription or misbranding of products. Conscientious manufacturers may prefer not to use a label which is capable of misleading and it may be that it will be desirable to prevent the use of the particular labels, but it is, in our opinion, not within the province of the Federal Trade Commission to do so.

The order is reversed.



STANDARD OIL CO. OF NEW YORK v. FEDERAL  
TRADE COMMISSION.<sup>1</sup>TEXAS CO. v. SAME.<sup>1</sup>

(Circuit Court of Appeals, Second Circuit. May 11, 1921.)

Nos. 111, 204.

1. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—MEANING OF “UNFAIR METHOD OF COMPETITION” IS FOR THE COURTS.

The meaning of the phrase “unfair method of competition in commerce,” used in Trade Commission Act, paragraph 5 (Comp. St., par. 8336e), is a question for the court and not for the Commission to determine.

2. TRADE MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 80½, NEW, VOL. 8A KEY-NO. SERIES—QUESTION FOR COURT NOT AVOIDED BY STATING AS FINDING OF FACT WHAT IS CONCLUSION OF LAW.

The rule that the meaning of the phrase “unfair method of competition” is a question of law for the courts is not avoided by the Trade Commission’s stating as a finding of fact what is a mere conclusion of law.

3. TRADE-MARKS AND TRADE NAMES AND UNFAIR COMPETITION KEY No. 68—REQUIREMENT THAT DEALERS DISTRIBUTE ONLY LOANER’S GASOLINE FROM LEASED DEVICES IS NOT “UNFAIR METHOD OF COMPETITION.”

Where distributors of gasoline leased for a nominal rental the devices for distributing the gasoline at filling stations on which they had marked the brand of their gasoline, the requirement that the retailer should not distribute through such device any gasoline except that supplied by the distributor, without a requirement that the retailer could not lease similar devices from rival distributors, was not an “unfair method of competition,” which could be prevented by the Federal Trade Commission, especially in view of the fact that supplying, from a pump marked with the name of one brand of gasoline, gasoline of a different brand would be a deception of the buying public.

4. MONOPOLIES KEY No. 8—SYSTEM WHICH IS NOT RESTRICTING COMPETITION IS NOT TENDING TO MONOPOLY.

Though one function of the Trade Commission is to discern and suppress in their beginning practices which tend to monopoly, such tendency is an inference from proven facts which is a question of law for the court, and which can not be drawn where the evidence does show any restriction on competition up to the present time, but instead shows that the business was keenly competitive.

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<sup>1</sup>See 2 F. T. C. 357.

**5. MONOPOLIES KEY NO. 17 (2)—LEASES OF GASOLINE DISTRIBUTING DEVICES, TO BE USED ONLY FOR DISTRIBUTING LESSOR'S OIL, DOES NOT SUBSTANTIALLY LESSEN COMPETITION.**

Leases, by gasoline distributors to retailers, of devices for the distribution of gasoline, which contained a clause prohibiting the retailer from distributing through such device gasoline not supplied by the distributor, but which did not prevent the retailer from leasing other devices for the distribution of gasoline of other distributors, does not violate Clayton Act, paragraph 3 (Comp. St., par. 8835c), prohibiting leases which substantially lessen competition or tend to create a monopoly in any line of commerce.

(The syllabus is taken from 273 Fed. 478.)

Petition to Revise Orders of the Federal Trade Commission.

Separate petitions by the Standard Oil Co. of New York and by the Texas Co. against the Federal Trade Commission to have set aside orders of the Commission separately entered against both petitioners. Orders reversed.

Petitions praying that orders of the Federal Trade Commission separately entered against both petitioners dated 27th April, 1920, be set aside. These litigations are the local fraction of upward of 25 proceedings brought by the Commission against persons and corporations in widely separated regions but all transacting the business of selling and distributing refined petroleum and especially gasoline suitable for engines of motor cars. The testimony in these two cases is the same and the pleadings and orders are alike except for names.

In September, 1919, the Commission complained against these petitioners that for more than four years previously they had been engaged in business, or had been conducting their business, in the manner set forth in the findings of fact made after the taking of voluminous evidence. Such findings may be thus summarized (omitting such formal matters as incorporations and the like):

(1) Petitioners produce and sell refined oil and gasoline but are not engaged in the manufacture of oil pumps, storage tanks, and containers (hereinafter collectively called "devices").

(2) They have been and are engaged in the leasing and loaning of devices, and they also maintain numerous storage stations for oil and gasoline in various States,

which stations are replenished by shipments from petitioners' refineries, and the oil so stored is sold and delivered from said stations to retail dealers in the several States.

(3) Each petitioner has leased and is now leasing to retailers of its own gasoline devices to be used by such retailers; and in so leasing, petitioners have made and are now making contracts or leases with the retailers obtaining devices, under which any given retailer agrees to use his leased device solely for the purpose of storing and vending the product of whatever petitioner furnished him with the device.

(4) The rental or charge to such retailer for any petitioner's device is nominal and does not afford a reasonable profit or return to the furnishing petitioner considering the value of a device, which petitioners procure by buying from manufacturers thereof.

(5) Petitioners have furnished and are furnishing devices to retailers only upon condition that each lessee uses his leased device only for the purpose of storing and selling therefrom the goods of the lessor.

(6) A majority of the retailers so leasing devices require in their business only a single device, though others may and do procure from each of several dealers in oil a leased device, and use them all, provided that each device is used only to facilitate the distribution of the lessor's product.

Upon the fact findings substantially stated above, orders have been based, entered 27th April, 1920, whereby each petitioner was required to "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. (2) Entering into contracts or agreements with dealers in its petroleum products, or 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 (the oil dealer proceeded against).

It is evident, and is admitted, that these cases and all the others above alluded to are designed by the Trade Commission to break up the present well-known

system of distributing and selling gasoline by "kerb-pumps" unless the pump furnishers or lessors will agree that anybody's gasoline may be stored in and sold from pumps belonging to and furnished by a particular dealer.

Martin Carey and Peter M. Speer, both of New York City, for Standard Oil Co., of N. Y.

Edwin B. Parker and James L. Nesbitt, both of New York City, for the Texas Co.

Adrien F. Busick and Eugene W. Burr, both of Washington, D. C., for Trade Commission.

*HOUGH, Circuit Judge:*

As the matter has not been argued, we have not referred to and will not dwell upon the pleadings put forth by the Commission, and assume, but not hold, that they comply with the rules suggested if not prescribed by Federal Trade Commission *v. Gratz*, 253 U. S. 427. In the language of the statute we think the "findings of the Commission as to the facts supported by testimony," so far as they go. But there are other facts thoroughly proven, admitted at bar, and aiding discussion.

Every pumping station is an advertisement; each bears the name of the oil producer whose gasoline is supplied therefrom, if the retailer honestly observed his bargain. The system is a great convenience to the public; it has increased enormously the ease with which motor drivers may obtain "gas" even in remote and thinly settled districts. It is the only method known or suggested, of keeping before the consuming public the oil manufacturers' trademark, and it has largely succeeded the system of distributing oil in barrels, which barrels bore the maker's trademark and were practically loaned to the vendees, to be returned empty.

The choice between owning and leasing pumps depends upon the extent of the retailer's business and the amount of his capital. The majority of small dealers have small capital, and therefore lease rather than buy. It is perfectly possible to buy from the same manufacturers who supply to the oil dealers the pumps leased by the latter. The competition between the various oil-selling persons and corporations is and has been very keen; each is desirous of extending the sale of his own brand, and the system of leased pumps each bearing the trade-mark or trade name of its lessor is regarded by many, though not all, wholesalers as a profitable form of advertisement. There is no agreement, combination, or arrangement between the various wholesale lessors as to parceling out territory or abstaining from supplying pumps to a community already supplied by another wholesaler.

By these facts three questions of law are presented:

(1) Is the system outlined an "unfair method of competition in commerce," the prevention of which would be "to the interest of the public"? (Sec. 5, Trade Commission Act, 38 Stat. 719.)

(2) Is the above-stated method of leasing unlawful under section 3 of the Clayton Act, whereof the language here important is noted in the margin.<sup>1</sup>

(3) Does the business here involved amount to interstate commerce?

Whatever may be the exact meaning or extreme scope of the still novel phrase "unfair method of competition," it is settled that it is for the courts and not the Commission to determine as matter of law what is and what is not included in the phrase. (Federal, etc., Commission *v.* Gratz, *supra.*) And this rule is not avoided by stating as a finding of fact what is a mere conclusion of law. (New Jersey, etc., Co. *v.* Trade Commission, 264 Fed. 509.)

The Commission justifies the order complained of by looking to the future rather than at the present, a position summed up in argument as follows:

The loaning practice restrains competition and tends toward monopoly, for the reason that it destroys the freedom of solicitation for business which the oil distributor would otherwise have. The gratuity which the practice confers removes the opportunity for competition because it ties tens of thousands of individual retailers to the oil-distributing corporations which engage them.

The Commission looking forward sees in the present highly competitive business of the various wholesalers a seed which will in time produce the fruit condemned in *Patterson v. United States*, 222 Fed. 599, where the court held:

For one competitor to exclude all or substantially all competitors from such opportunity, i. e., drive them from the field of freely offering their goods so as to have that field to himself is to monopolize according to the legal and accurate sense of the word.

Applied to the present case, this means and is admitted to mean that since most retailers do a small business they need only one pumping device; wherefore the first wholesaler who furnishes a free pump has monopolized the business of that retailer and so unfairly competed with all other wholesale dealers.

We think this reasoning confounds commerce with convenience, besides introducing into trade an element of unfairness and indeed dishonesty. There is no contract, agreement, or understanding by which any retailer is prevented from selling any brand of oil, and he can own or lease as many pumps as he likes or can use.

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<sup>1</sup> It shall be unlawful for any person engaged in commerce in the course of such commerce to lease \* \* \* machinery \* \* \* or other commodities \* \* \* for use \* \* \* on the condition \* \* \* that the lessee \* \* \* shall not use or deal in the goods \* \* \* of a competitor \* \* \* of the lessor, \* \* \* where the effect of such lease \* \* \* may be to substantially lessen competition or tend to create a monopoly in any line of commerce. (38 Stat. 731.)

It is unfair and dishonest to give out from a pump bearing one brand another maker's oil, and all that secures any one retailer's trade for any one wholesaler is the amount of business the retailer can gather from the community.

It is possible, when any system of distributing an article of prime necessity and enormous consumption is well established, that temptation arises for competing distributors to enter into treaties regulating prices, classifying customers, or dividing the area supplied into spheres of influence—one sphere for each distributor.

It may be admitted that one function of the Trade Commission is to discern and suppress such practices in their beginning; but a thing exists from its beginning, and it is not a conclusion of law from any facts here found that a system which at present is keenly competitive, extremely advantageous to the public, and, in the opinion of a majority of the competent witnesses economical, is at present unfair to anyone or unfair because tending to monopoly. A tendency is an inference from proven facts, and an inference from the facts as found by the Commission is a question of law for the court. As a matter of law there is at present no violation of the trade commission statute; therefore the first of respondent's contentions cannot be sustained.

For substantially the same reason the leases of these petitioners do not violate section 3 of the Clayton Act; i. e., the effect of their leases is not "to substantially lessen competition or tend to create a monopoly in any line of commerce." We note *Coca-Cola Co. v. Butler*, 229 Fed. 224, as containing a valuable commentary on this section of the Clayton Act; and the facts of that case are suggestive of the advantages to the public in being reasonably able to rely upon getting the "gas" he pays for out of any trade-marked pump.

It is of course true that if the trade or business under consideration is not interstate commerce the Commission had no jurisdiction. We express no opinion on this point; but because as matter of law no unfair method of competition has been shown and no violation of the Clayton Act, the orders complained of are reversed

FRUIT GROWERS' EXPRESS INCORPORATED v.  
FEDERAL TRADE COMMISSION.\*

(Circuit Court of Appeals, Seventh Circuit. June 16,  
1921.)

No. 2857.

1. MONOPOLIES KEY NO. 24 (2)—RAILROADS HELD NECESSARY PARTIES TO ANNUL EXCLUSIVE PROVISION IN CONTRACTS BETWEEN THEM AND A CAR COMPANY.

Under contracts between railroad companies and a car company providing that the car company would furnish refrigerator cars for a fruit crop and furnish men, icing stations, and ice to keep the cars iced, etc., and that the railroad companies would take all their refrigerator cars from the car company and pay icing charges and the usual mileage charge, the destruction of the exclusive clause would destroy the mutuality of the contract and render it unenforceable, and the railroad companies were necessary parties to a proceeding to annul it, as in violation of Clayton Act, paragraph 3 (Comp. St., par. 8835c).

2. MONOPOLIES KEY NO. 24 (1)—FEDERAL TRADE COMMISSION WITHOUT JURISDICTION OF PROCEEDING TO ANNUL EXCLUSIVE PROVISION OF CONTRACTS BETWEEN RAILROAD COMPANIES AND CAR COMPANY; "WHERE APPLICABLE TO COMMON CARRIERS."

Clayton Act, paragraph 11 (Comp. St., par. 8835j), conferring authority to enforce compliance with certain sections, including section 3 (Comp. St., par. 8835c), on the Interstate Commerce Commission "where applicable to common carriers," gives exclusive jurisdiction to the Interstate Commerce Commission where the facts involve common carriers or the business of common carriers, and the Federal Trade Commission is therefore without jurisdiction to require a car company to cease and desist from using or enforcing a provision in contracts with railroad companies requiring them to take all their refrigerator cars for a fruit crop from it.

(The syllabus is taken from 274 Fed. 205.)

Petition by the Fruit Growers' Express Incorporated to review an order of the Federal Trade Commission. Order annulled and set aside.

R. F. Feagans, of Chicago, Ill., for petitioner.

E. C. Alvord, of Washington, D. C., for respondent.

Before Baker, Evans, and Page, circuit judges.

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\* Reviewing order of the Commission in Federal Trade Commission v. Fruit Growers' Express, 2 F. T. C., 369. Petition by the Commission for writ of certiorari in this case was granted by the Supreme Court on October 24, 1921.

PAGE, *Circuit Judge*:

This is an original petition filed in this court under the provisions of section 11 of the act of October 15, 1914 (38 U. S. Stats. at L., p. 730), commonly known as the Clayton Act, to obtain a review of an order to cease and desist, entered by the Federal Trade Commission (here known as respondent) against Fruit Growers' Express (here known as petitioner).

In 1919 respondent filed its complaint charging that petitioner had made a contract with certain railroads containing the following clause, alleged to be in violation of section 3 of the Clayton Act:

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.

A motion to dismiss was denied, and petitioner answered, admitting the correctness of the above quotation, but saying that the exclusive clause was made in consideration of and depended upon other covenants on the part of petitioner. The answer also denied the alleged violation of the Clayton Act, jurisdiction in respondent, and urged the absence of necessary parties.

By the contract, the car company was to do the following things: Furnish, to be parked and distributed, required number of suitable refrigerator cars to carry all fruit tendered; furnish men, icing stations and ice, to keep cars iced to destination; keep cars in good repair; load and strip cars and furnish additional refrigeration under stated condition; furnish cars for points on foreign lines; hold itself accountable for failure to furnish cars required, properly iced, and for improper or faulty condition of the cars; keep an inspector at South Rocky Mount.

After a hearing, respondent made findings of fact from which it reached and expressed the following conclusion with reference to the exclusive clause in the contract:

The effect of such condition, \* \* \* 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 \* \* \* and that the use of such conditions is in violation of section 3 of an act of Congress approved October 15, 1914.

Thereupon respondent entered the order here complained of, which was, in substance, that petitioner cease and desist from making any new contract containing that exclusive clause and from enforcing it in existing contracts.

Authority to enforce compliance with section 3 of the Clayton Act is vested by section 11 thereof 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. If respondent had jurisdiction, it was by virtue of this section.

[1] The contract here involved covered the arrangements made by common carriers for moving the Georgia fruit crop during the season which was to begin 23 days after entry of the order to cease and desist. The previous year the crop amounted to 7,600 cars of peaches, and it had to be, and was, moved within a few weeks. To the action here complained of, and in which the contract was in part held to be illegal, the carriers were not parties. The carrier's consideration for the contract consisted of two promises, viz, first, that it would take all its requirements of refrigerator cars from petitioner; and second, that it would pay icing charges and also three-fourths of 1 cent per mile run on the lines of the carrier, which was the usual charge (50 I. C. C. R., p. 666). Inasmuch as the exclusive clause covered the only agreement in the contract to use any cars, the destruction of that clause destroyed the mutuality of the contract and it could not be enforced. *Dorsey v. Packwood*, 53 U. S. 126; *Tweedie Trading Co. v. Parlin & Orendorff Co.*, 204 Fed. 50; *Dennis v. Slyfield*, 117 Fed. 474; *American Cotton Oil Co. v. Kirk*, 68 Fed. 791, 794. Such being the effect of the finding and order, the carriers were necessary parties. *U. S. v. U. S. Shoe Machinery Co.*, 247 U. S. 32, 60.

[2] The words "where applicable to common carriers" in section 11 of the Clayton Act must mean that where the facts involve common carriers, or the business of common carriers, then the jurisdiction is solely in the Interstate Commerce Commission. The action complained of involved common carriers and tended to very greatly affect their business. Respondent was therefore without jurisdiction.

The order to cease and desist is annulled and set aside.

## APPENDIX III.

### RULES OF PRACTICE BEFORE THE COMMISSION.

[Adopted June 27, 1915. Amended as shown by footnotes.]

#### I. SESSIONS.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Principal office.

Commission may exercise power elsewhere.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Hearings as ordered.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

Sessions for orders and other business.

Quorum.

All orders of the Commission shall be signed by the Secretary.

Orders signed by Secretary.

#### II. COMPLAINTS.

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Who may ask complaint.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

Form of application.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges

Commission to investigate.

Issuance and service of complaint.

Notice. 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.<sup>1</sup>

### III. ANSWERS.

Time allowed for answer. Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer to the complaint. 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.<sup>2</sup>

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 prin-

Personal, or

By leaving copy, or

By registered mail.

<sup>1</sup> 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.

<sup>2</sup> Resolution passed by the Commission Oct. 19, 1920, calls for the filing of three copies of the answer.

cipal 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.

Return.

V. INTERVENTION.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Form of application.

Permitted by order.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

Size of paper, margin, etc., used on application.

VI. CONTINUANCES AND EXTENSIONS OF TIME.

Continuances and extensions of time will be granted at the discretion of the Commission.

In discretion of Commission.

VII. WITNESSES AND SUBPŒNAS.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Examination ordinarily oral.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for witnesses.

Subpœnas for the production of documentary evidence (unless directed to issue by a Commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Subpœnas for production of documentary evidence.

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.<sup>3</sup>

#### VIII. TIME FOR TAKING TESTIMONY.<sup>4</sup>

Examination of  
witnesses to pro-  
ceed as fast as  
practicable.

Notice to coun-  
sel.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than five days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.<sup>5</sup>

#### 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 com-  
missioner.

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

<sup>3</sup> This sentence added pursuant to resolution passed by the Commission Nov. 19, 1920.

<sup>4</sup> 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 XIII, XIV, XV, and XVI were originally numbered VIII, IX, X, and XI.

<sup>5</sup> The sentence originally read: "Not less than five *nor more than ten* days' notice," etc. It was amended to its present form by resolution passed by the Commission Dec. 9, 1921.

may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

General counsel or assistant to conduct hearing.

XII. HEARINGS BEFORE EXAMINERS.\*

When issue is joined and the case set for trial it shall be referred to an examiner for the taking of testimony. It shall be the duty of the examiner to complete the taking of testimony with all due dispatch, and he shall set the day and hour to which the taking of testimony may from time to time be adjourned. The taking of the testimony both for the Commission and the respondent shall be completed within 30 days after the beginning of the same unless, for good cause shown, the Commission shall extend the time. The examiner shall, within 10 days after the receipt of the stenographic report of the testimony, make his proposed finding as to the facts and his proposed order thereon, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, to such proposed findings and order and said exceptions shall specify the particular part or parts of the proposed findings of fact or proposed order to which exception is made, and said exceptions shall include any additional findings and any change in or addition to, the proposed order which either party may think proper. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. Argument on the exceptions to the proposed findings and order, if exceptions be filed, shall be had at the final argument on the merits.

Examiner to take testimony.

Testimony to be completed within 30 days except for good cause.

Examiner to make and serve proposed findings and order.

Exceptions by parties.

Briefs and argument thereon.

\* Rule adopted by the Commission May 20, 1921, making rules theretofore XII to XV, inclusive, XIII to XVI. The language of the first sentence of the rule was changed somewhat to its present form by resolution passed by the Commission Jan. 25, 1922.

## XIII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

- Commission may order.** The Commission may order testimony to be taken by deposition in a contested proceeding.
- Before any person designated.** Depositions may be taken before any person designated by the Commission and having power to administer oaths.
- Applications for depositions.** Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.
- Testimony of witness.** The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.
- Deposition to be forwarded**
- And filed. Copy to defendant or his attorney.**
- Size of paper, etc.** Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.
- Notice.** No deposition shall be taken except after at least six days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 30 days prior to such date of hearing.

Limitations as to time.

XIV. DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

Relevant and material matter only to be filed.

XV. BRIEFS.

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<sup>7</sup> 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.

<sup>7</sup> Fifteen copies originally called for. Amended to its present form July 29, 1920.



**Size of type, paper, etc.** Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide, and with double-leaded text and single-leaded citations.

**Oral arguments.** Oral arguments will be had only as ordered by the Commission.

#### XVI. 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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